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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1094

**Introduced by Committee on Judiciary (Escutia (Chair),
Morrow (Vice Chair), Alby, Aroner, Baugh, Figueroa,
Keeley, Kuehl, Ortiz, Pacheco, Shelley, and Villaraigosa)**

February 27, 1997

An act to amend Sections 6301.1, 8030.2, 8030.4, 8030.6, 8030.8, and 22350 of the Business and Professions Code, to amend Sections ~~853~~, 1793.23, 2924c, 2924j, *and* 2924.3, ~~2934a~~, ~~and 3144~~ of the Civil Code, to amend Sections 77, 200, ~~415.46~~, 484.70, 484.350, 569, 701.040, ~~703.140~~, ~~704.090~~, ~~904.2~~, 1005, 1985.3, 1985.6, 2024, 2025, and 2031 of, and to repeal Section 87 of, the Code of Civil Procedure, to amend Sections 8603, 9501, 9502, and 9504 of the Commercial Code, to amend Sections 8023, 8040, and 8201 of the Elections Code, ~~to amend Section 952 of the Evidence Code~~, to amend Section 4251 of the Family Code, to amend Sections ~~6103.9~~, ~~21290~~, ~~53069.4~~, ~~21290~~, 68152, 68511.3, ~~69845.5~~, 75050, 76219, ~~and 77200~~ 75050, *and*

76219 of, and to add Section 68514 to, the Government Code, to amend Sections 33502 and 115800.1 of the Health and Safety Code, ~~to repeal Section 101 of the Labor Code,~~ to amend Sections 1368 and 11165.8 of the Penal Code, ~~to amend Sections 40230 and 40256 of the Vehicle Code,~~ to amend Section 602 of the Welfare and Institutions Code, and to amend Section 5 of Chapter 1125 of the Statutes of 1990, relating to civil actions, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1094, as amended, Committee on Judiciary. Civil actions.

Existing law makes provision for the membership of the board of law library trustees in San Diego County, one of whom is designated as an attorney who is a member of the "San Diego Bar Association."

This bill would change that reference to the San Diego County Bar Association.

Existing law provides for the creation of a Court Reporters Board of California in the Department of Consumer Affairs and establishes a Transcript Reimbursement Fund, administered by the board, to be funded by a transfer of moneys from the Court Reporter Fund for the purpose of reimbursing the costs of shorthand reporting services provided to indigent and low-income civil litigants. The fund is continuously appropriated for that purpose. These funding and reimbursement provisions are set to become inoperative on July 1, 1999, and repealed effective January 1, 2000.

This bill would extend those termination dates to July 1, 2001, and January 1, 2002, respectively. Because of the extension of the existence of the Transcript Reimbursement Fund and its purposes, the bill would make an appropriation.

Existing law exempts specified persons from the requirement to register as a process server.

This bill would also exempt a registered professional photocopier from registering as a process server, if his or her service of process is limited to subpoenas for the production

of records, which subpoenas specify that the records be copied by that registered professional photocopier.

~~Existing law provides for the execution of a commitment statement by the recipient of a notice of potential liability in connection with a release of hazardous materials at a parcel of property, as specified.~~

~~This bill would provide that nothing in a commitment statement shall be binding upon a 3rd party under specified circumstances.~~

Existing law governs the procedure for a trustee's sale of real property.

This bill would require the proceeds of a trustee's sale of real property to be paid within 30 days after the conclusion of the period for notice to creditors if there is no dispute as to the priority of written claims submitted to the trustee, and would specify the action required of a trustee, if he or she fails to determine the priority of written claims within 90 days following the 30-day notice period. ~~The bill would also revise the provisions governing the substitution of a trustee.~~

Existing law provides for the appellate department of the superior court, as specified.

This bill would provide that the Chief Justice may designate any municipal court judge as a member of the appellate department of the superior court in specified circumstances.

Under existing law, when authorized by local superior court rules, a municipal court district pursuant to duly adopted court rules may use the same juror pool as that summoned for use in the superior court, with the exception of Alameda County. In Los Angeles County, the municipal courts are required to use the same jury pool as that summoned for use in the superior court.

This bill would delete the exception regarding Alameda County.

~~Existing law specifies the method of serving a summons and complaint in an unlawful detainer action, as well as for serving a prejudgment claim of right to possession.~~

~~This bill would specify that a summons and complaint in an unlawful detainer action, and a prejudgment claim of right to possession, may be served by posting upon a specified showing in court.~~

~~Existing law provides that no mechanics' lien binds any property for a period longer than 90 days after the recording of a claim of lien, except as specified; and if the claimant fails to commence an action to foreclose the lien within this period, the lien automatically is null and void. Existing law authorizes, after the expiration of this time period, the owner of the property or the owner of any interest therein to petition the proper court for a decree to release the property from the lien. Existing law also provides that, as against certain purchasers or encumbrancers for value and in good faith, no extension of the lien or of the time to enforce the same shall be effective unless the notice or agreement was recorded, as specified.~~

~~The bill would authorize a claimant who already has recorded a mechanics' lien to record an additional or successive claim of lien, as specified. This bill would provide that, subject to any stay issued by a bankruptcy court, a null and void lien shall not constitute notice nor impose a duty of inquiry, as specified.~~

Existing law provides that a party to a civil action may move for summary adjudication as to one or more civil causes of action upon various grounds, including that there is no merit to a claim for damages, as specified in the section governing exemplary damages.

This bill would delete reference to the section governing exemplary damages, extending the authorization to any claim for damages.

Existing law provides for a claim of exemption from attachment to be filed and served on the plaintiff not less than 5 days before the hearing on the application for attachment.

This bill would change that time requirement to 5 court days.

Existing law authorizes the investment for interest of funds in the hands of a receiver only upon order of the court with the consent of all the parties.

This bill would instead authorize the investment of funds in the hands of a receiver in interest bearing accounts with specified financial institutions without an order of the court or the consent of the parties.



~~Existing law sets forth the property exempt from bankruptcy.~~

~~This bill would add thereto a payment under an individual retirement account.~~

Existing law provides for the times for serving all moving and supporting papers prior to a civil hearing.

This bill would require the moving and supporting papers to be a copy of the papers filed with the court.

Existing law revises the rights and remedies of the parties under a security agreement operative January 1, 1999.

This bill would change the operative date to January 1, 2002.

Existing law requires a candidate for the office of judge of the superior or municipal court to file a declaration of intention to become a candidate. Existing law requires all candidates for a judicial office to file a declaration of candidacy.

This bill would provide that no candidate for a judicial office shall be required to state his or her residential address on a declaration of intention to become a candidate or a declaration of candidacy.

~~Existing law defines “confidential communication between client and lawyer” for purposes of the lawyer-client privilege.~~

~~This bill would revise that definition, as specified.~~

~~Existing law provides that specified funds of a judgment debtor confined in a state prison or facility or other local correctional facility held in trust for, or to the credit of, the judgment debtor are exempt from judgment in the amount of \$1,000 unless the judgment is for a specified restitution fine or order, in which case the exemption is in the amount of \$300.~~

~~This bill would provide that the exemption shall not be applicable to any portion of an order for the reimbursement of court-appointed attorney fees and would make a related change.~~

Existing law requires notice of a motion to produce personal records of a consumer who is a party to a civil action to be given to the witness and deposition officer prior to production.

This bill would require that notice to be given at least 5 days prior to production.

Existing law prohibits a witness from being required to produce employment records, as specified, except upon court order or agreement of the parties, witnesses, and employees affected.

This bill would extend this provision to the production of employment records by a deposition officer, and make related changes.

Existing law specifies certain time limits governing discovery in civil actions and proceedings.

This bill would provide that when the last day to perform or complete any act governed by those time limits falls on a Saturday, Sunday, or holiday, as specified, the time limit is extended until the next day not a Saturday, Sunday, or holiday.

Under existing law, the party to whom an inspection demand is directed shall serve the response upon the other parties within 20 days after service of the inspection demand, except as specified.

This bill would extend the time limit for service of the response from 20 to 30 days.

Existing law provides that where a corporation is a party in a municipal court, it may appear through a director, officer, or employee, whether or not the person is an attorney.

This bill would repeal that provision.

Under existing law, all actions filed by the district attorney or by any other party for an order to establish, modify, or enforce child or spousal support, including actions to establish paternity, are referred to a child support commissioner in the superior court.

This bill would delete the reference to actions filed by any party, other than the district attorney, for an order to establish, modify, or enforce child support, or to establish paternity, and would provide that all actions or proceedings filed by a party other than the district attorney to modify or enforce a support order established by the district attorney be referred to a child support commissioner, as specified.

Under existing law, upon legal separation or dissolution of a marriage, the court shall make whatever orders are necessary or appropriate to ensure that each party receives his or her full community property share in any retirement plan, pursuant to provisions of the Family Code.



This bill would revise the cross-reference to the Family Code, as specified.

~~Under existing law, the district attorney is exempt from any fees, including fees for the service of process, in an action to establish or enforce a support obligation.~~

~~This bill would instead provide that a district attorney may negotiate the cost of service of process in such actions with the sheriff or marshal.~~

Existing law specifies the time when various court records may be destroyed.

This bill would revise time for the destruction of applications in forma pauperis, as specified.

Existing law specifies the various duties of the Judicial Council.

This bill would set forth certain findings of the Legislature, and urge the Judicial Council to continue its efforts to ensure California Indian and California tribal access to justice and to assist in the establishment of tribal courts, as specified.

Existing law provides a framework for the expenditure of moneys from the Robbins Courthouse Construction Fund or borrowed against the fund for courtroom construction in Los Angeles County, and requires that construction be within specified statistical areas, judicial districts and communities, before further construction may begin.

This bill would make technical, nonsubstantive changes.

~~Existing law authorizes the state to allocate funds to individual trial courts pursuant to an allocation schedule adopted by the Judicial Council, but precludes the state from allocating an amount which is less than the required amounts remitted to the state by the county in which those courts are located for the 1997-98 fiscal year.~~

~~This bill would provide, as of July 1, 1998, that the state would be precluded from allocating funds to individual trial courts in an amount that is less than the amount the county in which the courts are located remitted to the state for the 1998-99 fiscal year.~~

~~Existing law authorizes the legislative body of a local agency to adopt an ordinance to make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. That law requires the ordinance to set forth the~~

~~administrative procedures that govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. The administrative review includes the right to an appeal to be heard by the municipal court where the same shall be heard de novo, except as specified.~~

Existing law requires the Judicial Council to collect information from the courts regarding injuries from in-line skating on public property.

This bill would create a state-mandated local program by requiring the appropriate local public agency to maintain a record of injuries from in-line skating on public property, all claims, all lawsuits, and the results thereof, and to file specified records with the Judicial Council, which shall submit a report thereon to the Legislature, as specified.

Under existing law, an inmate sentenced to imprisonment in a state prison or confined in a county jail who files a civil action or notice of appeal of a civil action in forma pauperis shall, in addition to the form required for filing in forma pauperis, also file a statement of account for any sums due to the inmate for the 6-month period immediately preceding the civil action or notice of appeal, and this copy shall be certified by the appropriate official of the Department of Corrections.

This bill would additionally provide that a county jail could certify the inmate's statement of account.

~~Existing law generally authorizes the preservation of trial court records, as defined, in any form of communication or representation, as specified. Existing law also authorizes the clerk of the superior court to maintain a register of actions, as specified, or, alternatively, preserve all the court records filed, lodged, or maintained in the case.~~

~~This bill would provide that as an alternative to maintaining a register of actions, the clerk of the superior court may preserve the court records filed, lodged, or maintained in a case by any means authorized pursuant to the general provisions authorizing the preservation of trial court records.~~

Existing law provides for the rights of nonmembers in retirement plans upon legal separation or dissolution of marriage, as specified.



This bill would revise the cross-reference to the Family Code, as specified.

~~Existing law specifically exempts the Division of Labor Standards Enforcement of the Department of Industrial Relations from all court costs of any nature in any civil action to which the division is a party, including the costs of service of a summons or levy under writ of attachment or execution, as specified. Existing law generally provides that neither the state nor any county, city, district, or other political subdivision, nor any public officer or body, acting in his or her official capacity on behalf of the state, or any county, city, district or other political subdivision, shall pay or deposit any fee for the filing of any document or paper, for the performance of any official service, or for the filing of any stipulation or agreement that may constitute an appearance in any court by any other party to the stipulation or agreement, as specified.~~

~~This bill would repeal the provision exempting the Division of Labor Standards Enforcement of the Department of Industrial Relations from all court costs of any nature in a civil action.~~

Existing law provides that a judge, during the pendency of an action and prior to judgment, may address the issue of a defendant's mental competence by stating any doubt in the record and inquiring of the attorney for the defendant, as specified. Existing law also provides that if the attorney for the defendant informs the court that he or she believes the defendant is or may be mentally incompetent, the court shall order a competency hearing, as specified, and if found to be mentally incompetent, the jury shall be discharged.

This bill would make technical, nonsubstantive changes.

Existing law, to the Child Abuse and Neglect Reporting Act, imposes upon health practitioners the responsibility to report observed or suspected child abuse to a child protective agency. "Health practitioner" for purposes of that act means a physician or surgeon, psychiatrist, psychologist, licensed nurse, or any other person currently licensed pursuant to provisions of law regulating healing arts.

This bill would add to that definition, a clinical social worker.

~~Under existing law, a contestant of a final administrative decision regarding a parking violation or a toll evasion violation is authorized to seek a review of the administrative decision by filing an appeal to be heard by the municipal court where the appeal shall be heard de novo, except as specified. In Lagos v. City of Oakland, 41 Cal. App. 4th Supp. 10, the court concluded that the de novo review by the municipal court of the administrative decision regarding a parking violation ends that adjudicative process and that the superior court is without jurisdiction to consider appeals on the matter.~~

~~This bill would provide that further appeals may not be taken from a decision of a municipal court involving all the proceedings described above. The bill would specify that these appeals to the municipal court are informal with the purpose of dispensing of justice promptly, fairly, and inexpensively.~~

~~The bill would also provide that no party to these appeals has a right to a trial by a court or jury and that a statement of decision by the municipal court is not required.~~

~~The bill would make conforming and technical changes.~~

Existing law provides that any person under 18 years of age who violates any law of this state or the United States or any ordinance of any city or county, with the exception of a curfew ordinance, is within the jurisdiction of the juvenile court, which may adjudge this person to be a ward of the court.

This bill would make technical, nonsubstantive changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 6301.1 of the Business and Professions Code is amended to read:

6301.1. Notwithstanding Section 6301, in San Diego County the board of law library trustees shall be constituted, as follows:

(a) Two judges of the superior court, to be elected by and from judges in the San Diego County Judicial District. Each superior court judge so elected shall serve a three-year term.

(b) Two judges from the municipal courts of the county. The courts may, by joint agreement, determine the pattern of representation on the board. Each municipal court judge so elected shall serve a three-year term.

(c) The board of supervisors shall appoint three attorneys resident in the county to the board of law library trustees, to serve overlapping three-year terms. In order to stagger the three appointments, the board of supervisors shall, in January of 1997, appoint one attorney to a one-year term, one attorney to a two-year term, and one attorney to a three-year term; and as each term expires, the new appointee shall thereafter serve three-year terms. At least one attorney appointed pursuant to this subdivision shall be a member of the San Diego County Bar Association.

(d) In the event a trustee cannot serve a full term, the appointing authority for that individual shall appoint another qualified person to complete that term. Interim appointments may be made by the board of law library trustees in accordance with Section 6305.

SEC. 1.1. Section 22350 of the Business and Professions Code is amended to read:

22350. (a) Any natural person who makes more than 10 services of process within this state during one calendar year, for specific compensation or in expectation of specific compensation, where such compensation is directly attributable to the service of process, shall file and maintain a verified certificate of registration as a

1 process server with the county clerk of the county in
2 which he or she resides or has his or her principal place
3 of business. Any corporation or partnership that derives
4 or expects to derive compensation from service of process
5 within this state shall also file and maintain a verified
6 certificate of registration as a process server with the
7 county clerk of the county in which the corporation or
8 partnership has its principal place of business.

9 (b) This chapter shall not apply to any of the following:

10 (1) Any sheriff, marshal, or government employee
11 who is acting within the course and scope of his or her
12 employment.

13 (2) An attorney or his or her employees.

14 (3) Any person who is specially appointed by a court
15 to serve its process.

16 (4) A licensed private investigator or his or her
17 employees.

18 (5) A professional photocopier registered under
19 Section 22450 whose only service of process relates to
20 subpoenas for the production of records, which
21 subpoenas specify that the records be copied by that
22 registered professional photocopier.

23 SEC. 1.01. Section 8030.2 of the Business and
24 Professions Code is amended to read:

25 8030.2. (a) To provide shorthand reporting services
26 to low-income litigants in civil cases, who are unable to
27 otherwise afford those services, funds generated by fees
28 received by the board pursuant to subdivision (c) of
29 Section 8031 in excess of funds needed to support the
30 board's operating budget for the fiscal year in which a
31 transfer described below is made shall be used by the
32 board for the purpose of establishing and maintaining a
33 Transcript Reimbursement Fund. The Transcript
34 Reimbursement Fund shall be established by a transfer of
35 funds from the Court Reporters' Fund and shall be
36 maintained in an amount no less than three hundred
37 thousand dollars (\$300,000) for each fiscal year.

38 (b) All moneys held in the Court Reporters' Fund on
39 the effective date of this section in excess of the board's

1 operating budget for the 1996–97 fiscal year shall be used
2 as provided in subdivision (a).

3 (c) Refunds and unexpended funds that are
4 anticipated to remain in the Transcript Reimbursement
5 Fund at the end of the fiscal year shall be considered by
6 the board in establishing the fee assessment pursuant to
7 Section 8031 so that the assessment shall maintain the
8 Transcript Reimbursement Fund at the appropriate level
9 in the following fiscal year.

10 (d) The Transcript Reimbursement Fund is hereby
11 created in the State Treasury. Notwithstanding Section
12 13340 of the Government Code, moneys in the Transcript
13 Reimbursement Fund are continuously appropriated for
14 the purposes of this chapter.

15 (e) Applicants who have been reimbursed pursuant to
16 this chapter for services provided to litigants and who are
17 awarded court costs or attorneys' fees by judgment or by
18 settlement agreement, shall refund the full amount of
19 that reimbursement to the fund within 90 days of receipt
20 of the award or settlement.

21 (f) Subject to the limitations of this chapter, the board
22 shall maintain the fund at a level that is sufficient to pay
23 all qualified claims. To accomplish this objective, the
24 board shall utilize all refunds, unexpended funds, fees,
25 and any other moneys received by the board.

26 (g) Notwithstanding Section 16346 of the Government
27 Code, all unencumbered funds remaining in the
28 Transcript Reimbursement Fund as of June 29, 2001, shall
29 be transferred to the Court Reporters' Fund.

30 This section shall become inoperative on July 1, 2001,
31 and, as of January 1, 2002, is repealed, unless a later
32 enacted statute, that becomes operative on or before
33 January 1, 2002, deletes or extends the dates on which it
34 becomes inoperative and is repealed.

35 SEC. 1.02. Section 8030.4 of the Business and
36 Professions Code is amended to read:

37 8030.4. As used in this chapter:

38 (a) "Qualified legal services project" means a
39 nonprofit project incorporated and operated exclusively
40 in California that provides as its primary purpose and

1 function legal services without charge to indigent
2 persons, has a board of directors or advisory board
3 composed of both attorneys and consumers of legal
4 services, and provides for community participation in
5 legal services programming. Legal services projects
6 funded either in whole or in part by the Legal Services
7 Corporation or with Older Americans Act funds are
8 presumed to be qualified legal services projects for the
9 purposes of this chapter.

10 (b) “Qualified support center” means an incorporated
11 nonprofit legal services center, having an office or offices
12 in California, which office or offices provide legal services
13 or technical assistance without charge to qualified legal
14 services projects and their clients on a multicounty basis
15 in California. Support centers funded either in whole or
16 in part by the Legal Services Corporation or with Older
17 Americans Act funds are presumed to be qualified legal
18 services projects for the purposes of this chapter.

19 (c) “Other qualified project” means a nonprofit
20 organization formed for charitable or other public
21 purposes, not receiving funds from the Legal Services
22 Corporation or pursuant to the Older Americans Act,
23 which organization or association provides free legal
24 services to indigent persons.

25 (d) “Pro bono attorney” means any attorney, law firm,
26 or legal corporation, licensed to practice law in this state,
27 which undertakes without charge to the party the
28 representation of an indigent person, referred by a
29 qualified legal services project, qualified support center,
30 or other qualified project, in a case not considered to be
31 fee generating as defined in this chapter.

32 (e) “Applicant” means a qualified legal services
33 project, qualified support center, other qualified project,
34 or pro bono attorney applying to receive funds from the
35 Transcript Reimbursement Fund established by this
36 chapter. The term “applicant” shall not include persons
37 appearing pro se to represent themselves at any stage of
38 the case.

39 (f) “Indigent person” means either a person whose
40 income is 125 percent or less of the current poverty

1 threshold established by the Office of Management and
2 Budget of the United States, a disabled person whose
3 income after meeting medical and other
4 disability-related special expenses is 125 percent or less of
5 that current poverty threshold, or a person who receives
6 or is eligible to receive supplemental security income.

7 (g) “Fee-generating case” means any case or matter
8 which, if undertaken on behalf of an eligible client by an
9 attorney in private practice, reasonably may be expected
10 to result in payment of a fee for legal services from an
11 award to a client, from public funds, or from an opposing
12 party. A reasonable expectation as to payment of a legal
13 fee exists wherever a client enters into a contingent fee
14 agreement with his or her lawyer. If there is no
15 contingent fee agreement, a case is not considered fee
16 generating if adequate representation is deemed to be
17 unavailable because of the occurrence of any of the
18 following circumstances:

19 (1) Where the applicant has determined that referral
20 is not possible because of any of the following:

21 (A) The case has been rejected by the local lawyer
22 referral service, or if there is no such service, by two
23 private attorneys who have experience in the subject
24 matter of the case.

25 (B) Neither the referral service nor any lawyer will
26 consider the case without payment of a consultation fee.

27 (C) The case is of the type that private attorneys in the
28 area ordinarily do not accept, or do not accept without
29 prepayment of a fee.

30 (D) Emergency circumstances compel immediate
31 action before referral can be made, but the client is
32 advised that, if appropriate and consistent with
33 professional responsibility, referral will be attempted at
34 a later time.

35 (2) Where recovery of damages is not the principal
36 object of the case and a request for damages is merely
37 ancillary to an action for equitable or other nonpecuniary
38 relief; or inclusion of a counterclaim requesting damages
39 is necessary for effective defense or because of applicable
40 rules governing joinder of counterclaims.

1 (3) Where a court appoints an applicant or an
2 employee of an applicant pursuant to a statute or a court
3 rule or practice of equal applicability to all attorneys in
4 the jurisdiction.

5 (4) In any case involving the rights of a claimant under
6 a public supported benefit program for which
7 entitlement to benefit is based on need.

8 (h) "Legal Services Corporation" means the Legal
9 Services Corporation established under the Legal
10 Services Corporation Act of 1974, Public Law 93-355, as
11 amended.

12 (i) "Supplemental security income recipient" means
13 an individual receiving or eligible to receive payments
14 under Title XVI of the Social Security Act, Public Law
15 92-603, as amended, or payment under Chapter 3
16 (commencing with Section 12000) of Part 3 of Division 9
17 of the Welfare and Institutions Code.

18 (j) "Lawyer referral service" means a lawyer referral
19 program authorized by the State Bar of California
20 pursuant to the rules of professional conduct.

21 (k) "Older Americans Act" means the Older
22 Americans Act of 1965, Public Law 89-73, as amended.

23 (l) "Rules of professional conduct" means those rules
24 adopted by the State Bar pursuant to Sections 6076 and
25 6077.

26 (m) "Certified shorthand reporter" means a
27 shorthand reporter certified pursuant to Article 3
28 (commencing with Section 8020) performing shorthand
29 reporting services pursuant to Section 8017.

30 (n) "Case" means a single legal proceeding from its
31 inception, through all levels of hearing, trial, and appeal,
32 until its ultimate conclusion and disposition.

33 This section shall become inoperative on July 1, 2001,
34 and, as of January 1, 2002, is repealed, unless a later
35 enacted statute, that becomes operative on or before
36 January 1, 2002, deletes or extends the dates on which it
37 becomes inoperative and is repealed.

38 SEC. 1.03. Section 8030.6 of the Business and
39 Professions Code is amended to read:

1 8030.6. The board shall disburse funds from the
 2 Transcript Reimbursement Fund for the costs, exclusive
 3 of per diem charges, of preparing either an original
 4 transcript and one copy thereof, or where appropriate, a
 5 copy of the transcript, of court or deposition proceedings,
 6 or both, incurred as a contractual obligation between the
 7 shorthand reporter and the applicant, for litigation
 8 conducted in California. If no deposition transcript is
 9 ordered, the board may reimburse the applicant or the
 10 certified shorthand reporter designated in the
 11 application for per diem costs. The rate of per diem for
 12 depositions shall not exceed seventy-five dollars (\$75) for
 13 a half day, or one hundred twenty-five dollars (\$125) for
 14 a full day. In the event that a transcript is ordered within
 15 one year of the date of the deposition, but subsequent to
 16 the per diem having been reimbursed by the Transcript
 17 Reimbursement Fund, the amount of the per diem shall
 18 be deducted from the amount of transcript.
 19 Reimbursement may be obtained through the following
 20 procedures:

21 (a) The applicant or certified shorthand reporter shall
 22 promptly submit to the board the certified shorthand
 23 reporter's invoice for transcripts together with the
 24 appropriate documentation as is required by this chapter.

25 (b) Except as provided in subdivision (c), the board
 26 shall promptly determine if the applicant or the certified
 27 shorthand reporter is entitled to reimbursement under
 28 this chapter and shall make payment as follows:

29 (1) Regular customary charges for preparation of
 30 original deposition transcripts and one copy thereof, or a
 31 copy of the transcripts.

32 (2) Regular customary charges for expedited
 33 deposition transcripts up to a maximum of two thousand
 34 five hundred dollars (\$2,500) per case.

35 (3) Regular customary charges for the preparation of
 36 original transcripts and one copy thereof, or a copy of
 37 transcripts of court proceedings.

38 (4) Regular customary charges for expedited or daily
 39 charges for preparation of original transcripts and one
 40 copy thereof or a copy of transcripts of court proceedings.

1 (5) The charges may not include notary or handling
2 fees. The charges may include actual shipping costs and
3 exhibits, except that the cost of exhibits may not exceed
4 thirty-five cents (\$0.35) each or a total of thirty-five
5 dollars (\$35) per transcript.

6 (c) The maximum amount reimbursable by the fund
7 under subdivision (b) may not exceed twenty thousand
8 dollars (\$20,000) per case per year.

9 (d) If entitled, and funds are available, the board shall
10 forthwith disburse the appropriate sum to the applicant
11 or the certified shorthand reporter when documentation
12 as provided in subdivision (d) of Section 8030.8
13 accompanies the application. A notice shall be sent to the
14 recipient requiring the recipient to file a notice with the
15 court in which the action is pending stating the sum of
16 reimbursement paid pursuant to this section. The notice
17 filed with the court shall also state that if the sum is
18 subsequently included in any award of costs made in the
19 action, that the sum is to be ordered refunded by the
20 applicant to the Transcript Reimbursement Fund
21 whenever the sum is actually recovered as costs. The
22 court may not consider whether payment has been made
23 from the Transcript Reimbursement Fund in
24 determining the appropriateness of any award of costs to
25 the parties. The board shall also forthwith notify the
26 applicant that the reimbursed sum has been paid to the
27 certified shorthand reporter and shall likewise notify the
28 applicant of the duty to refund any of the sum actually
29 recovered as costs in the action.

30 (e) If not entitled, the board shall forthwith return a
31 copy of the invoice to the applicant and the designated
32 certified shorthand reporter together with a notice
33 stating the grounds for denial.

34 (f) The board shall complete its actions under this
35 subdivision within 30 days of receipt of the invoice and all
36 required documentation, including a completed
37 application.

38 (g) Applications for reimbursements from the fund
39 shall be filled on a first-come basis.

1 (h) Applications for reimbursement that cannot be
2 paid from the fund due to insufficiency of the fund for
3 that fiscal year shall be held over until the next fiscal year
4 to be paid out of the renewed fund.

5 This section shall become inoperative on July 1, 2001,
6 and, as of January 1, 2002, is repealed, unless a later
7 enacted statute, that becomes operative on or before
8 January 1, 2002, deletes or extends the dates on which it
9 becomes inoperative and is repealed.

10 SEC. 1.04. Section 8030.8 of the Business and
11 Professions Code is amended to read:

12 8030.8. (a) For purposes of this chapter,
13 documentation accompanying an invoice is sufficient to
14 establish entitlement for reimbursement from the
15 Transcript Reimbursement Fund if it is filed with the
16 executive officer on an application form prescribed by
17 the board that is complete in all respects, and that
18 establishes all of the following:

19 (1) The case name and number and that the litigant or
20 litigants requesting the reimbursement are indigent
21 persons.

22 (2) The applicant is qualified under the provisions of
23 this chapter.

24 (3) The case is not a fee-generating case, as defined in
25 Section 8030.4.

26 (4) The invoice or other documentation shall evidence
27 that the certified shorthand reporter to be reimbursed
28 was, at the time the services were rendered, a duly
29 licensed certified shorthand reporter.

30 (5) The invoice shall be accompanied by a statement,
31 signed by the applicant, stating that the charges are for
32 transcripts actually provided as indicated on the invoice.

33 (6) The applicant has acknowledged, in writing, that
34 as a condition of entitlement for reimbursement that the
35 applicant agrees to refund the entire amount disbursed
36 from the Transcript Reimbursement Fund from any costs
37 or attorneys' fees awarded to the applicant by the court
38 or provided for in any settlement agreement in the case.

1 (7) The certified shorthand reporter's invoice for
2 transcripts shall include separate itemizations of charges
3 claimed, as follows:

4 (A) Total charges and rates for customary services in
5 preparation of an original transcript and one copy or a
6 copy of the transcript of depositions.

7 (B) Total charges and rates for expedited deposition
8 transcripts.

9 (C) Total charges and rates in connection with
10 transcription of court proceedings.

11 (b) For an applicant claiming to be eligible pursuant
12 to subdivision (a), (b), or (c) of Section 8030.4, a letter
13 from the director of the project or center, certifying that
14 the project or center meets the standards set forth in one
15 of those subdivisions and that the litigant or litigants are
16 indigent persons, is sufficient documentation to establish
17 eligibility.

18 (c) For an applicant claiming to be eligible pursuant
19 to subdivision (d) of Section 8030.4, a letter certifying that
20 the applicant meets the requirements of that subdivision,
21 that the case is not a fee-generating case, as defined in
22 subdivision (g) of Section 8030.4, and that the litigant or
23 litigants are indigent persons, together with a letter from
24 the director of a project or center defined in subdivision
25 (a), (b), or (c) of Section 8030.4 certifying that the
26 litigant or litigants had been referred by that project or
27 center to the applicant, is sufficient documentation to
28 establish eligibility.

29 (d) The applicant may receive reimbursement
30 directly from the board when the applicant has
31 previously paid the certified shorthand reporter for
32 transcripts as provided in Section 8030.6. To receive
33 payment directly, the applicant shall submit, in addition
34 to all other required documentation, an itemized
35 statement signed by the certified shorthand reporter
36 performing the services that describes payment for
37 transcripts in accordance with the requirements of
38 Section 8030.6.

1 (e) The board may prescribe appropriate forms to be
2 used by applicants and certified reporters to facilitate
3 these requirements.

4 (f) This chapter does not restrict the contractual
5 obligation or payment for services, including, but not
6 limited to, billing the applicant directly, during the
7 pendency of the claim.

8 This section shall become inoperative on July 1, 2001,
9 and, as of January 1, 2002, is repealed, unless a later
10 enacted statute, that becomes operative on or before
11 January 1, 2002, deletes or extends the dates on which it
12 becomes inoperative and is repealed.

13 ~~SEC. 1.2. Section 853 of the Civil Code is amended to~~
14 ~~read:~~

15 ~~853. (a) Neither the failure to issue a commitment~~
16 ~~statement nor its issuance shall be construed as an~~
17 ~~admission that the recipient of the notice of potential~~
18 ~~liability is liable under any federal, state, or local law,~~
19 ~~including common law, for the release that the party~~
20 ~~agrees to investigate or respond. Neither the failure to~~
21 ~~issue a commitment statement nor the contents of the~~
22 ~~commitment statement shall be admissible evidence in~~
23 ~~any proceeding, as defined in Section 901 of the Evidence~~
24 ~~Code, except that the contents of the commitment~~
25 ~~statement shall be admissible evidence in an action to~~
26 ~~enforce the commitment statement to the extent that~~
27 ~~such contents would be admissible under other~~
28 ~~applicable law.~~

29 ~~(b) Nothing in this chapter shall subject a notice~~
30 ~~recipient to any damages, fines, or penalties for a failure~~
31 ~~to make a written response, either positive or negative,~~
32 ~~to a notice of potential liability.~~

33 ~~(c) Nothing in this chapter shall subject the owner of~~
34 ~~a site to any damages, fines, or penalties for a failure to~~
35 ~~send a notice of potential liability pursuant to Section 851.~~
36 ~~Failure by the owner of a site to send a notice of potential~~
37 ~~liability of a release in a timely fashion shall not be~~
38 ~~deemed to create any liability for the owner under a~~
39 ~~theory of negligence per se.~~

~~(d) Nothing in this chapter imposes an affirmative duty on the owner of a site, or any potentially responsible party, to discover, or determine the nature or extent of, a hazardous materials release at the site. This chapter does not affect such an affirmative duty to the extent it is imposed by any other law.~~

~~(e) Subject to the defenses specified in Section 101(35) and 107(b) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Secs. 9601(35) and 9607(b)), a cause of action is hereby established whereby a notice recipient may recover from any responsible party any reasonable response costs for conducting a response action as may be approved or overseen by an oversight agency or as incurred pursuant to a commitment statement. Liability among responsible parties shall be allocated based upon the equitable factors specified in subdivision (e) of Section 25356.3 of the Health and Safety Code. No third-party beneficiary rights are created by a commitment statement, except as provided in subdivision (b) of Section 854. This cause of action applies to costs incurred prior to enactment of this subdivision. However, no recovery may be obtained under this subdivision for costs incurred more than three years prior to the filing of litigation to recover those costs. The cause of action established pursuant to this subdivision shall not apply against a current or former owner of a site unless that owner operated a business that caused a release being addressed by a response action at the site and the costs incurred by the notice recipient were in response to a release caused by the owner.~~

~~(f) Nothing in this chapter shall affect or limit the rights of an owner under preexisting contract. Nothing in this chapter shall affect or limit the right of a notice recipient and owner to agree to an allocation of liability or to an assignment of rights and obligations that is different from or inconsistent with this chapter. Such agreements shall supersede the terms of this chapter.~~

1 ~~(g) Nothing in this chapter shall make a notice~~
2 ~~recipient a responsible party, beyond the obligations the~~
3 ~~notice recipient undertakes pursuant to this chapter.~~

4 ~~(h) Nothing in this chapter shall apply to causes of~~
5 ~~action for wrongful death or personal injury. However,~~
6 ~~the pleading of a cause of action for wrongful death or~~
7 ~~personal injury shall not affect the applicability of this~~
8 ~~chapter to other causes of action in the same civil action.~~

9 ~~(i) Nothing in a commitment statement shall be~~
10 ~~binding upon any third party, including, but not limited~~
11 ~~to, any successors or assigns of the owner or lenders~~
12 ~~having a security interest in the site, who have acquired~~
13 ~~their interest in good faith and without actual knowledge~~
14 ~~of the commitment statement.~~

15 SEC. 1.3. Section 1793.23 of the Civil Code is amended
16 to read:

17 1793.23. (a) The Legislature finds and declares all of
18 the following:

19 (1) That the expansion of state warranty laws covering
20 new and used cars has given important and valuable
21 protection to consumers.

22 (2) That, in states without this valuable warranty
23 protection, used and irreparable motor vehicles are
24 being resold in the marketplace without notice to the
25 subsequent purchaser.

26 (3) That other states have addressed this problem by
27 requiring notices on the title of these vehicles or other
28 notice procedures to warn consumers that the motor
29 vehicles were repurchased by a dealer or manufacturer
30 because the vehicle could not be repaired in a reasonable
31 length of time or a reasonable number of repair attempts
32 or the dealer or manufacturer was not willing to repair
33 the vehicle.

34 (4) That these notices serve the interests of consumers
35 who have a right to information relevant to their buying
36 decisions.

37 (5) That the disappearance of these notices upon the
38 transfer of title from another state to this state encourages
39 the transport of “lemons” to this state for sale to the
40 drivers of this state.

1 (b) This section and Section 1793.24 shall be known,
2 and may be cited as, the Automotive Consumer
3 Notification Act.

4 (c) Any manufacturer who reacquires or assists a
5 dealer or lienholder to reacquire a motor vehicle
6 registered in this state, any other state, or a federally
7 administered district shall, prior to any sale, lease, or
8 transfer of the vehicle in this state, or prior to exporting
9 the vehicle to another state for sale, lease, or transfer if the
10 vehicle was registered in this state and reacquired
11 pursuant to paragraph (2) of subdivision (d) of Section
12 1793.2, cause the vehicle to be retitled in the name of the
13 manufacturer, request the Department of Motor
14 Vehicles to inscribe the ownership certificate with the
15 notation "Lemon Law Buyback," and affix a decal to the
16 vehicle in accordance with Section 11713.12 of the
17 Vehicle Code if the manufacturer knew or should have
18 known that the vehicle is required by law to be replaced,
19 accepted for restitution due to the failure of the
20 manufacturer to conform the vehicle to applicable
21 warranties pursuant to paragraph (2) of subdivision (d)
22 of Section 1793.2, or accepted for restitution by the
23 manufacturer due to the failure of the manufacturer to
24 conform the vehicle to warranties required by any other
25 applicable law of the state, any other state, or federal law.

26 (d) Any manufacturer who reacquires or assists a
27 dealer or lienholder to reacquire a motor vehicle in
28 response to a request by the buyer or lessee that the
29 vehicle be either replaced or accepted for restitution
30 because the vehicle did not conform to express warranties
31 shall, prior to the sale, lease, or other transfer of the
32 vehicle, execute and deliver to the subsequent transferee
33 a notice and obtain the transferee's written
34 acknowledgment of a notice, as prescribed by Section
35 1793.24.

36 (e) Any person, including any dealer, who acquires a
37 motor vehicle for resale and knows or should have known
38 that the vehicle was reacquired by the vehicle's
39 manufacturer in response to a request by the last retail
40 owner or lessee of the vehicle that it be replaced or



1 accepted for restitution because the vehicle did not
2 conform to express warranties shall, prior to the sale,
3 lease, or other transfer, execute and deliver to the
4 subsequent transferee a notice and obtain the transferee's
5 written acknowledgment of a notice, as prescribed by
6 Section 1793.24.

7 (f) Any person, including any manufacturer or dealer,
8 who sells, leases, or transfers ownership of a motor vehicle
9 when the vehicle's ownership certificate is inscribed with
10 the notation "Lemon Law Buyback" shall, prior to the
11 sale, lease, or ownership transfer of the vehicle, provide
12 the transferee with a disclosure statement signed by the
13 transferee that states:

14
15 "THIS VEHICLE WAS REPURCHASED BY ITS
16 MANUFACTURER DUE TO A DEFECT IN THE
17 VEHICLE PURSUANT TO CONSUMER WARRANTY
18 LAWS. THE TITLE TO THIS VEHICLE HAS BEEN
19 PERMANENTLY BRANDED WITH THE NOTATION
20 'LEMON LAW BUYBACK'."

21
22 (g) The disclosure requirements in subdivisions (d),
23 (e), and (f) are cumulative with all other consumer
24 notice requirements and do not relieve any person,
25 including any dealer or manufacturer, from complying
26 with any other applicable law, including any requirement
27 of subdivision (f) of Section 1793.22.

28 (h) For purposes of this section, "dealer" means any
29 person engaged in the business of selling, offering for sale,
30 or negotiating the retail sale of, a used motor vehicle or
31 selling motor vehicles as a broker or agent for another,
32 including the officers, agents, and employees of the
33 person and any combination or association of dealers.

34 SEC. 1.4. Section 2924c of the Civil Code is amended
35 to read:

36 2924c. (a) (1) Whenever all or a portion of the
37 principal sum of any obligation secured by deed of trust
38 or mortgage on real property or an estate for years
39 therein hereafter executed has, prior to the maturity date
40 fixed in that obligation, become due or been declared due

1 by reason of default in payment of interest or of any
2 installment of principal, or by reason of failure of trustor
3 or mortgagor to pay, in accordance with the terms of that
4 obligation or of the deed of trust or mortgage, taxes,
5 assessments, premiums for insurance, or advances made
6 by beneficiary or mortgagee in accordance with the
7 terms of that obligation or of the deed of trust or
8 mortgage, the trustor or mortgagor or his or her successor
9 in interest in the mortgaged or trust property or any part
10 thereof, or any beneficiary under a subordinate deed of
11 trust or any other person having a subordinate lien or
12 encumbrance of record thereon, at any time within the
13 period specified in subdivision (e), if the power of sale
14 therein is to be exercised, or, otherwise at any time prior
15 to entry of the decree of foreclosure, may pay to the
16 beneficiary or the mortgagee or their successors in
17 interest, respectively, the entire amount due, at the time
18 payment is tendered, with respect to (A) all amounts of
19 principal, interest, taxes, assessments, insurance
20 premiums, or advances actually known by the beneficiary
21 to be, and that are, in default and shown in the notice of
22 default, under the terms of the deed of trust or mortgage
23 and the obligation secured thereby, (B) all amounts in
24 default on recurring obligations not shown in the notice
25 of default, and (C) all reasonable costs and expenses,
26 subject to subdivision (c), which are actually incurred in
27 enforcing the terms of the obligation, deed of trust, or
28 mortgage, and trustee's or attorney's fees, subject to
29 subdivision (d), other than the portion of principal as
30 would not then be due had no default occurred, and
31 thereby cure the default theretofore existing, and
32 thereupon, all proceedings theretofore had or instituted
33 shall be dismissed or discontinued and the obligation and
34 deed of trust or mortgage shall be reinstated and shall be
35 and remain in force and effect, the same as if the
36 acceleration had not occurred. This section does not
37 apply to bonds or other evidences of indebtedness
38 authorized or permitted to be issued by the
39 Commissioner of Corporations or made by a public utility
40 subject to the Public Utilities Code. For the purposes of

1 this subdivision, the term “recurring obligation” means
2 all amounts of principal and interest on the loan, or rents,
3 subject to the deed of trust or mortgage in default due
4 after the notice of default is recorded; all amounts of
5 principal and interest or rents advanced on senior liens or
6 leaseholds which are advanced after the recordation of
7 the notice of default; and payments of taxes, assessments,
8 and hazard insurance advanced after recordation of the
9 notice of default. Where the beneficiary or mortgagee has
10 made no advances on defaults which would constitute
11 recurring obligations, the beneficiary or mortgagee may
12 require the trustor or mortgagor to provide reliable
13 written evidence that the amounts have been paid prior
14 to reinstatement.

15 (2) If the trustor, mortgagor, or other person
16 authorized to cure the default pursuant to this subdivision
17 does cure the default, the beneficiary or mortgagee or the
18 agent for the beneficiary or mortgagee shall, within 21
19 days following the reinstatement, execute and deliver to
20 the trustee a notice of rescission which rescinds the
21 declaration of default and demand for sale and advises the
22 trustee of the date of reinstatement. The trustee shall
23 cause the notice of rescission to be recorded within 30
24 days of receipt of the notice of rescission and of all
25 allowable fees and costs.

26 No charge, except for the recording fee, shall be made
27 against the trustor or mortgagor for the execution and
28 recordation of the notice which rescinds the declaration
29 of default and demand for sale.

30 (b) (1) The notice, of any default described in this
31 section, recorded pursuant to Section 2924, and mailed to
32 any person pursuant to Section 2924b, shall begin with the
33 following statement, printed or typed thereon:

34

35 “IMPORTANT NOTICE [14-point boldface type if
36 printed or in capital letters if typed]
37

38

39 IF YOUR PROPERTY IS IN FORECLOSURE
40 BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS,
41 IT MAY BE SOLD WITHOUT ANY COURT ACTION,

[14-point boldface type if printed or in capital letters if typed] and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is _____ as of _____
(Date)

and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2)

1 establish a schedule of payments in order to cure your
2 default; or both (1) and (2).

3 Following the expiration of the time period referred to
4 in the first paragraph of this notice, unless the obligation
5 being foreclosed upon or a separate written agreement
6 between you and your creditor permits a longer period,
7 you have only the legal right to stop the sale of your
8 property by paying the entire amount demanded by your
9 creditor.

10 To find out the amount you must pay, or to arrange for
11 payment to stop the foreclosure, or if your property is in
12 foreclosure for any other reason, contact:

13
14 _____
15 (Name of beneficiary or mortgagee)
16

17 _____
18 (Mailing address)
19

20 _____
21 (Telephone)
22

23 If you have any questions, you should contact a lawyer
24 or the governmental agency which may have insured
25 your loan.

26 Notwithstanding the fact that your property is in
27 foreclosure, you may offer your property for sale,
28 provided the sale is concluded prior to the conclusion of
29 the foreclosure.

30 Remember, **YOU MAY LOSE LEGAL RIGHTS IF**
31 **YOU DO NOT TAKE PROMPT ACTION.** [14-point
32 boldface type if printed or in capital letters if typed]”
33

34 Unless otherwise specified, the notice, if printed, shall
35 appear in at least 12-point boldface type.

36 If the obligation secured by the deed of trust or
37 mortgage is a contract or agreement described in
38 paragraph (1) or (4) of subdivision (a) of Section 1632,
39 the notice required herein shall be in Spanish if the
40 trustor requested a Spanish language translation of the

1 contract or agreement pursuant to Section 1632. If the
2 obligation secured by the deed of trust or mortgage is
3 contained in a home improvement contract, as defined in
4 Sections 7151.2 and 7159 of the Business and Professions
5 Code, which is subject to Title 2 (commencing with
6 Section 1801), the seller shall specify on the contract
7 whether or not the contract was principally negotiated in
8 Spanish and if the contract was principally negotiated in
9 Spanish, the notice required herein shall be in Spanish.
10 No assignee of the contract or person authorized to
11 record the notice of default shall incur any obligation or
12 liability for failing to mail a notice in Spanish unless
13 Spanish is specified in the contract or the assignee or
14 person has actual knowledge that the secured obligation
15 was principally negotiated in Spanish. Unless specified in
16 writing to the contrary, a copy of the notice required by
17 subdivision (c) of Section 2924b shall be in English.

18 (2) Any failure to comply with the provisions of this
19 subdivision shall not affect the validity of a sale in favor
20 of a bona fide purchaser or the rights of an encumbrancer
21 for value and without notice.

22 (c) Costs and expenses which may be charged
23 pursuant to Sections 2924 to 2924i, inclusive, shall be
24 limited to the costs incurred for recording, mailing,
25 including certified and express mail charges, publishing,
26 and posting notices required by Sections 2924 to 2924i,
27 inclusive, postponement pursuant to Section 2924g not to
28 exceed fifty dollars (\$50) per postponement and a fee for
29 a trustee's sale guarantee or, in the event of judicial
30 foreclosure, a litigation guarantee. For purposes of this
31 subdivision, a trustee or beneficiary may purchase a
32 trustee's sale guarantee at a rate meeting the standards
33 contained in Sections 12401.1 and 12401.3 of the Insurance
34 Code.

35 (d) Trustee's or attorney's fees which may be charged
36 pursuant to subdivision (a), or until the notice of sale is
37 deposited in the mail to the trustor as provided in Section
38 2924b, if the sale is by power of sale contained in the deed
39 of trust or mortgage, or, otherwise at any time prior to the
40 decree of foreclosure, are hereby authorized to be in an

1 amount which does not exceed two hundred forty dollars
2 (\$240) with respect to any portion of the unpaid principal
3 sum secured which is fifty thousand dollars (\$50,000) or
4 less, plus one-half of 1 percent of the unpaid principal sum
5 secured exceeding fifty thousand dollars (\$50,000) up to
6 and including one hundred fifty thousand dollars
7 (\$150,000), plus one-quarter of 1 percent of any portion
8 of the unpaid principal sum secured exceeding one
9 hundred fifty thousand dollars (\$150,000) up to and
10 including five hundred thousand dollars (\$500,000), plus
11 one-eighth of 1 percent of any portion of the unpaid
12 principal sum secured exceeding five hundred thousand
13 dollars (\$500,000). Any charge for trustee's or attorney's
14 fees authorized by this subdivision shall be conclusively
15 presumed to be lawful and valid where the charge does
16 not exceed the amounts authorized herein. For purposes
17 of this subdivision, the unpaid principal sum secured shall
18 be determined as of the date the notice of default is
19 recorded.

20 (e) Reinstatement of a monetary default under the
21 terms of an obligation secured by a deed of trust, or
22 mortgage may be made at any time within the period
23 commencing with the date of recordation of the notice of
24 default until five business days prior to the date of sale set
25 forth in the initial recorded notice of sale.

26 In the event the sale does not take place on the date set
27 forth in the initial recorded notice of sale or a subsequent
28 recorded notice of sale is required to be given, the right
29 of reinstatement shall be revived as of the date of
30 recordation of the subsequent notice of sale, and shall
31 continue from that date until five business days prior to
32 the date of sale set forth in the subsequently recorded
33 notice of sale.

34 In the event the date of sale is postponed on the date
35 of sale set forth in either an initial or any subsequent
36 notice of sale, or is postponed on the date declared for sale
37 at an immediately preceding postponement of sale, and,
38 the postponement is for a period which exceeds five
39 business days from the date set forth in the notice of sale,
40 or declared at the time of postponement, then the right

1 of reinstatement is revived as of the date of
2 postponement and shall continue from that date until five
3 business days prior to the date of sale declared at the time
4 of the postponement.

5 Nothing contained herein shall give rise to a right of
6 reinstatement during the period of five business days
7 prior to the date of sale, whether the date of sale is noticed
8 in a notice of sale or declared at a postponement of sale.

9 Pursuant to the terms of this subdivision, no
10 beneficiary, trustee, mortgagee, or their agents or
11 successors shall be liable in any manner to a trustor,
12 mortgagor, their agents or successors for the failure to
13 allow a reinstatement of the obligation secured by a deed
14 of trust or mortgage during the period of five business
15 days prior to the sale of the security property, and no such
16 right of reinstatement during this period is created by this
17 section. Any right of reinstatement created by this section
18 is terminated five business days prior to the date of sale
19 set forth in the initial date of sale, and is revived only as
20 prescribed herein and only as of the date set forth herein.

21 As used in this subdivision, the term “business day” has
22 the same meaning as specified in Section 9.

23 SEC. 1.5. Section 2924j of the Civil Code is amended
24 to read:

25 2924j. (a) Unless an interpleader action has been
26 filed, within 30 days of the execution of the trustee’s deed
27 resulting from a sale in which there are proceeds
28 remaining after payment of the amounts required by
29 paragraphs (1) and (2) of subdivision (a) of Section
30 2924k, the trustee shall send written notice to all persons
31 with recorded interests in the real property as of the date
32 immediately prior to the trustee’s sale who would be
33 entitled to notice pursuant to subdivisions (b) and (c) of
34 Section 2924b. The notice shall be sent by first-class mail
35 in the manner provided in paragraph (1) of subdivision
36 (c) of Section 2924b and inform each entitled person of
37 each of the following:

38 (1) That there has been a trustee’s sale of the described
39 real property.



1 (2) That the noticed person may have a claim to all or
2 a portion of the sale proceeds remaining after payment
3 of the amounts required by paragraphs (1) and (2) of
4 subdivision (a) of Section 2924k.

5 (3) The noticed person may contact the trustee at the
6 address provided in the notice to pursue any potential
7 claim.

8 (4) That before the trustee can act, the noticed person
9 shall submit a written claim to the trustee, executed
10 under penalty of perjury, stating the following:

11 (A) The amount of the claim to the date of trustee's
12 sale.

13 (B) An itemized statement of the principal, interest,
14 and other charges.

15 (C) That claims must be received by the trustee at the
16 address stated in the notice no later than 30 days after the
17 date the trustee sends notice to the potential claimant.

18 (b) The trustee shall exercise due diligence to
19 determine the priority of the written claims received by
20 the trustee to the trustee's sale surplus proceeds from
21 those persons to whom notice was sent pursuant to
22 subdivision (a). In the event there is no dispute as to the
23 priority of the written claims submitted to the trustee,
24 proceeds shall be paid within 30 days after the conclusion
25 of the notice period. If the trustee has failed to determine
26 the priority of written claims within 90 days following the
27 30-day notice period, then within 10 days thereafter the
28 trustee shall deposit the funds with the clerk of the court
29 pursuant to subdivision (c) or file an interpleader action
30 pursuant to subdivision (e). Nothing in this section shall
31 preclude any person from pursuing other remedies or
32 claims as to surplus proceeds.

33 (c) If, after due diligence, the trustee is unable to
34 determine the priority of the written claims received by
35 the trustee to the trustee's sale surplus of multiple persons
36 or if the trustee determines there is a conflict between
37 potential claimants, the trustee may file a declaration of
38 the unresolved claims and deposit with the clerk of the
39 superior or municipal court, as applicable, of the county
40 in which the sale occurred, that portion of the sales

1 proceeds that cannot be distributed, less any fees charged
2 by the clerk pursuant to this subdivision. The declaration
3 shall specify the date of the trustee's sale, a description of
4 the property, the names and addresses of all persons sent
5 notice pursuant to subdivision (a), a statement that the
6 trustee exercised due diligence pursuant to subdivision
7 (b), that the trustee provided written notice as required
8 by subdivisions (a) and (d) and the amount of the sales
9 proceeds deposited by the trustee with the superior or
10 municipal court. Further, the trustee shall submit a copy
11 of the trustee's sales guarantee and any information
12 relevant to the identity, location, and priority of the
13 potential claimants with the superior or municipal court
14 and shall file proof of service of the notice required by
15 subdivision (d) on all persons described in subdivision
16 (a).

17 The clerk shall deposit the amount with the county
18 treasurer subject to order of the superior or municipal
19 court upon the application of any interested party. The
20 clerk may charge a reasonable fee for the performance of
21 activities pursuant to this subdivision equal to the fee for
22 filing an interpleader action pursuant to Article 2
23 (commencing with Section 26820) of Division 2 of Title
24 3 of the Government Code. Upon deposit of that portion
25 of the sale proceeds that cannot be distributed by due
26 diligence, the trustee shall be discharged of further
27 responsibility for the disbursement of sale proceeds. A
28 deposit with the clerk of the superior or municipal court
29 pursuant to this subdivision may be either for the total
30 proceeds of the trustee's sale, less any fees charged by the
31 clerk, if a conflict or conflicts exist with respect to the total
32 proceeds, or that portion that cannot be distributed after
33 due diligence, less any fees charged by the clerk.

34 (d) Before the trustee deposits the funds with the
35 clerk of the court pursuant to subdivision (c), the trustee
36 shall send written notice by first-class mail, postage
37 prepaid, to all persons described in subdivision (a)
38 informing them that the trustee intends to deposit the
39 funds with the clerk of the superior or municipal court,
40 as applicable, and that a claim for the funds must be filed

1 with the court within 30 days from the date of the notice,
2 providing the address of the court in which the funds
3 were deposited, and a phone number for obtaining
4 further information.

5 Within 90 days after deposit with the clerk, the court
6 shall consider all claims filed at least 15 days before the
7 date on which the hearing is scheduled by the court, the
8 clerk shall serve written notice of the hearing by first-class
9 mail on all claimants identified in the trustees' declaration
10 at the addresses specified therein. The court shall
11 distribute the deposited funds to any and all claimants
12 entitled thereto.

13 (e) Nothing in this section restricts the ability of a
14 trustee to file an interpleader action in order to resolve
15 a dispute about the proceeds of a trustee's sale. Once an
16 interpleader action has been filed, thereafter the
17 provisions of this section shall not apply.

18 (f) "Due diligence," for the purposes of this section
19 means that the trustee researched the written claims
20 submitted or other evidence of conflicts and determined
21 that a conflict of priorities exists between two or more
22 claimants which the trustee is unable to resolve.

23 SEC. 1.6. Section 2924.3 of the Civil Code is amended
24 to read:

25 2924.3. (a) Except as provided in subdivisions (b)
26 and (c), a person who has undertaken as an agent of a
27 mortgagee, beneficiary, or owner of a promissory note
28 secured directly or collaterally by a mortgage or deed of
29 trust on real property or an estate for years therein, to
30 make collections of payments from an obligor under the
31 note, shall mail the following notices, postage prepaid, to
32 each mortgagee, beneficiary or owner for whom the
33 agent has agreed to make collections from the obligor
34 under the note:

35 (1) A copy of the notice of default filed in the office of
36 the county recorder pursuant to Section 2924 on account
37 of a breach of obligation under the promissory note on
38 which the agent has agreed to make collections of
39 payments, within 15 days after recordation.

1 (2) Notice that a notice of default has been recorded
2 pursuant to Section 2924 on account of a breach of an
3 obligation secured by a mortgage or deed of trust against
4 the same property or estate for years therein having
5 priority over the mortgage or deed of trust securing the
6 obligation described in paragraph (1), within 15 days
7 after recordation or within three business days after the
8 agent receives the information, whichever is later.

9 (3) Notice of the time and place scheduled for the sale
10 of the real property or estate for years therein pursuant
11 to Section 2924f under a power of sale in a mortgage or
12 deed of trust securing an obligation described in
13 paragraphs (1) or (2), not less than 15 days before the
14 scheduled date of the sale or not later than the next
15 business day after the agent receives the information,
16 whichever is later.

17 (b) An agent who has undertaken to make collections
18 on behalf of mortgagees, beneficiaries or owners of
19 promissory notes secured by mortgages or deeds of trust
20 on real property or an estate for years therein shall not be
21 required to comply with the provisions of subdivision (a)
22 with respect to a mortgagee, beneficiary or owner who is
23 entitled to receive notice pursuant to subdivision (c) of
24 Section 2924b or for whom a request for notice has been
25 recorded pursuant to subdivision (b) of Section 2924b if
26 the agent reasonably believes that the address of the
27 mortgagee, beneficiary, or owner described in Section
28 2924b is the current business or residence address of that
29 person.

30 (c) An agent who has undertaken to make collections
31 on behalf of mortgagees, beneficiaries or owners of
32 promissory notes secured by mortgages or deeds of trust
33 on real property or an estate for years therein shall not be
34 required to comply with the provisions of paragraph (1)
35 or (2) of subdivision (a) if the agent knows or reasonably
36 believes that the default has already been cured by or on
37 behalf of the obligor.

38 (d) Any failure to comply with the provisions of this
39 section shall not affect the validity of a sale in favor of a



1 bona fide purchaser or the rights of an encumbrancer for
2 value and without notice.

3 ~~SEC. 1.8. Section 2934a of the Civil Code is amended~~
4 ~~to read:~~

5 ~~2934a. (a) (1) The trustee under a trust deed upon~~
6 ~~real property or an estate for years therein given to secure~~
7 ~~an obligation to pay money and conferring no other~~
8 ~~duties upon the trustee than those which are incidental~~
9 ~~to the exercise of the power of sale therein conferred, may~~
10 ~~be substituted by the recording in the county in which the~~
11 ~~property is located of a substitution executed and~~
12 ~~acknowledged by: (A) all of the beneficiaries under the~~
13 ~~trust deed, or their successors in interest, and the~~
14 ~~substitution shall be effective notwithstanding any~~
15 ~~contrary provision in any trust deed executed on or after~~
16 ~~January 1, 1968; or (B) the holders of more than 50~~
17 ~~percent of the record beneficial interest of a series of~~
18 ~~notes secured by the same real property or of undivided~~
19 ~~interests in a note secured by real property equivalent to~~
20 ~~a series transaction, exclusive of any notes or interests of~~
21 ~~a licensed real estate broker that is the issuer or servicer~~
22 ~~of the notes or interests or of any affiliate of that licensed~~
23 ~~real estate broker.~~

24 ~~(2) A substitution executed pursuant to subparagraph~~
25 ~~(B) of paragraph (1) is not effective unless all the parties~~
26 ~~signing the substitution sign, under penalty of perjury, a~~
27 ~~separate written document stating the following:~~

28 ~~(A) The substitution has been signed pursuant to~~
29 ~~subparagraph (B) of paragraph (1).~~

30 ~~(B) None of the undersigned is a licensed real estate~~
31 ~~broker or an affiliate of the broker that is the issuer or~~
32 ~~servicer of the obligation secured by the deed of trust.~~

33 ~~(C) The undersigned together hold more than 50~~
34 ~~percent of the record beneficial interest of a series of~~
35 ~~notes secured by the same real property or of undivided~~
36 ~~interests in a note secured by real property equivalent to~~
37 ~~a series transaction.~~

38 ~~(D) Notice of the substitution was sent by certified~~
39 ~~mail, postage prepaid, with return receipt requested to~~
40 ~~each holder of an interest in the obligation secured by the~~

1 deed of trust who has not joined in the execution of the
2 substitution or the separate document.

3 The separate document shall be attached to the
4 substitution and be recorded in the office of the county
5 recorder of each county in which the real property
6 described in the deed of trust is located. Once the
7 document required by this paragraph is recorded, it shall
8 constitute conclusive evidence of compliance with the
9 requirements of this paragraph in favor of substituted
10 trustees acting pursuant to this section, subsequent
11 assignees of the obligation secured by the deed of trust
12 and subsequent bona fide purchasers or encumbrancers
13 for value of the real property described therein.

14 (3) For purposes of this section, “affiliate of the
15 licensed real estate broker” includes any person as
16 defined in Section 25013 of the Corporations Code that is
17 controlled by, or is under common control with, or who
18 controls, a licensed real estate broker. “Control” means
19 the possession, direct or indirect, of the power to direct
20 or cause the direction of management and policies.

21 (4) The substitution shall contain the date of
22 recordation of the trust deed, the name of the trustor, the
23 book and page or instrument number where the trust
24 deed is recorded, and the name of the new trustee. From
25 the time the substitution is filed for record, the new
26 trustee shall succeed to all the powers, duties, authority,
27 and title granted and delegated to the trustee named in
28 the deed of trust. A substitution may be accomplished,
29 with respect to multiple deeds of trust which are
30 recorded in the same county in which the substitution is
31 being recorded and which all have the same trustee and
32 beneficiary or beneficiaries, by recording a single
33 document, complying with the requirements of this
34 section, substituting trustees for all those deeds of trust.

35 (b) Except where the trustee is identified in the notice
36 of default, if the substitution is recorded after a notice of
37 default has been recorded but prior to the recording of
38 the notice of sale, the beneficiary or beneficiaries shall
39 cause a copy of the substitution to be mailed, prior to the
40 recording thereof, in the manner provided in Section

1 ~~2924b, to the trustee then of record and to all persons to~~
2 ~~whom a copy of the notice of default would be required~~
3 ~~to be mailed by the provisions of Section 2924b. An~~
4 ~~affidavit shall be attached to the substitution that notice~~
5 ~~has been given to those persons and in the manner~~
6 ~~required by this subdivision.~~

7 ~~(c) Notwithstanding any provision of this section or~~
8 ~~any provision in any deed of trust, unless a new notice of~~
9 ~~sale containing the name, street address, and telephone~~
10 ~~number of the substituted trustee is given pursuant to~~
11 ~~Section 2924f, any sale conducted by the substituted~~
12 ~~trustee shall be void.~~

13 ~~(d) This section shall become operative on January 1,~~
14 ~~1998.~~

15 ~~SEC. 2. Section 3144 of the Civil Code is amended to~~
16 ~~read:~~

17 ~~3144. (a) No lien provided for in this chapter binds~~
18 ~~any property for a longer period of time than 90 days after~~
19 ~~the recording of the claim of lien, unless within that time~~
20 ~~an action to foreclose the lien is commenced in a proper~~
21 ~~court, except that, if credit is given and notice of the fact~~
22 ~~and terms of that credit is recorded in the office of the~~
23 ~~county recorder subsequent to the recording of this claim~~
24 ~~of lien and prior to the expiration of the 90 day period,~~
25 ~~then this lien continues in force until 90 days after the~~
26 ~~expiration of the credit, but in no case longer than one~~
27 ~~year from the time of completion of the work of~~
28 ~~improvement.~~

29 ~~(b) A lien claimant who has already recorded a~~
30 ~~mechanics' lien may record an additional claim of lien or~~
31 ~~successive claim of lien if the period for filing a claim of~~
32 ~~lien described in Section 3115, 3116, or 3117 has not~~
33 ~~elapsed. This claim of lien shall be subject to subdivision~~
34 ~~(a).~~

35 ~~(c) No extension of the lien rights pursuant to~~
36 ~~subdivision (a) or additional or successive claim of lien~~
37 ~~under subdivision (b) shall be valid, unless and until a~~
38 ~~notice of extension signed by the property owner or~~
39 ~~notice of an additional or successive claim of lien is~~
40 ~~recorded in the office of the county recorder.~~

~~(d) Subject to any stay issued by a bankruptcy court, if the claimant fails to commence an action to foreclose the lien within the time limitation provided in subdivision (a), that lien automatically shall be null and void for all time and of no further force and effect for any purpose whatsoever.~~

~~(e) A lien that is null and void shall not constitute actual or constructive notice of any matters contained therein, or relating to the lien, nor shall it impose any duty of inquiry upon any person thereafter dealing with the property described therein.~~

~~(f) It is the intent of the Legislature that this section shall provide for the absolute and complete free transferability of real property after the expiration of the lien, including any recorded extensions thereof or additional or successive claims of lien, unless and until recordation of a notice as provided in Section 3146.~~

~~SEC. 2.2.~~

SEC. 2. Section 77 of the Code of Civil Procedure is amended to read:

77. (a) In every county and city and county, there is an appellate department of the superior court consisting of three judges or, when the Chairperson of the Judicial Council finds it necessary, four judges.

(1) In a county with three or fewer judges of the superior court, the appellate department shall consist of those judges, one of whom shall be designated as presiding judge by the Chairperson of the Judicial Council, and an additional judge or judges as designated by the Chairperson of the Judicial Council. Each additional judge shall be a judge of the superior court of another county or a judge retired from the superior court or court of higher jurisdiction in this state.

(2) In a county with four or more judges of the superior court, the appellate department shall consist of judges of that court designated by the Chairperson of the Judicial Council, who shall also designate one of the judges as the presiding judge of the department.

(b) In an appellate department with four judges, no more than three judges shall participate in a hearing or

1 decision. The presiding judge of the department shall
2 designate the three judges who shall participate.

3 (c) In addition to their other duties, the judges
4 designated as members of the appellate department of
5 the superior court shall serve for the period specified in
6 the order of designation. Whenever a judge is designated
7 to serve in the appellate department of the superior court
8 of a county other than the county in which the judge was
9 elected or appointed as a superior court judge, or if he or
10 she is retired, in a county other than the county in which
11 he or she resides, he or she shall receive from the county
12 to which he or she is designated his or her expenses for
13 travel, board, and lodging. If the judge is out of his or her
14 county overnight or longer, by reason of the designation,
15 the judge shall be paid a per diem allowance in lieu of
16 expenses for board and lodging in the same amounts as
17 are payable for those purposes to justices of the Supreme
18 Court under the rules of the State Board of Control. In
19 addition, a retired judge shall receive from the state and
20 the county to which he or she is designated, for the time
21 so served, amounts equal to that which he or she would
22 have received from each if he or she had been assigned
23 to the superior court of the county.

24 (d) The concurrence of two judges of the appellate
25 department of the superior court shall be necessary to
26 render the decision in every case in, and to transact any
27 other business except business that may be done at
28 chambers by the presiding judge of, that department.
29 The presiding judge shall convene the appellate
30 department when necessary. He or she shall also
31 supervise its business and transact any business that may
32 be done at chambers.

33 (e) Every appellate department under this section
34 shall have jurisdiction on appeal from the municipal
35 courts within the county or city and county in all cases in
36 which an appeal may be taken to the superior court as is
37 now or may hereafter be provided by law, except those
38 appeals that require a retrial in the superior court. The
39 powers of each appellate department shall be the same as
40 are now or may hereafter be provided by law or rule of

1 the Judicial Council relating to appeals to the superior
2 courts.

3 (f) The Judicial Council may promulgate rules, not
4 inconsistent with law, governing the practice and
5 procedure and the disposition of the business of such
6 appellate departments, or of each class thereof.

7 (g) Notwithstanding any other provision of law, the
8 chief justice may designate any municipal court judge as
9 a member of the appellate department of the superior
10 court if the municipal court is participating in a trial court
11 coordination plan approved by the Judicial Council and
12 the designated municipal court judge has been assigned
13 to the superior court of the county by the chief justice.

14 SEC. 2.3. Section 87 of the Code of Civil Procedure is
15 repealed.

16 SEC. 2.4. Section 200 of the Code of Civil Procedure
17 is amended to read:

18 200. When authorized by local superior court rules, a
19 municipal court district pursuant to duly adopted court
20 rule may use the same juror pool as that summoned for
21 use in the superior court. Persons so selected for jury
22 service in those municipal courts need not be residents of
23 the judicial district. In Los Angeles County, the municipal
24 courts shall use the same jury pool as that summoned for
25 use in the superior court.

26 ~~SEC. 3. Section 415.46 of the Code of Civil Procedure~~
27 ~~is amended to read:~~

28 ~~415.46. (a) In addition to the service of a summons~~
29 ~~and complaint in an action for unlawful detainer upon a~~
30 ~~tenant and subtenant, if any, as prescribed by this article,~~
31 ~~a prejudgment claim of right to possession may also be~~
32 ~~served on any person who appears to be or who may claim~~
33 ~~to have occupied the premises at the time of the filing of~~
34 ~~the action. Service upon occupants shall be made~~
35 ~~pursuant to subdivision (c) by serving a copy of a~~
36 ~~prejudgment claim of right to possession, as specified in~~
37 ~~subdivision (f), attached to a copy of the summons and~~
38 ~~complaint at the same time service is made upon the~~
39 ~~tenant and subtenant, if any.~~

1 ~~(b) Service of the prejudgment claim of right to~~
2 ~~possession in this manner shall be effected by a marshal,~~
3 ~~sheriff, or registered process server.~~

4 ~~(c) When serving the summons and complaint upon a~~
5 ~~tenant and subtenant, if any, the marshal, sheriff, or~~
6 ~~registered process server shall make a reasonably diligent~~
7 ~~effort to ascertain whether there are other adult~~
8 ~~occupants of the premises who are not named in the~~
9 ~~summons and complaint by inquiring of the person or~~
10 ~~persons who are being personally served, or any person~~
11 ~~of suitable age and discretion who appears to reside upon~~
12 ~~the premises, whether there are other occupants of the~~
13 ~~premises.~~

14 ~~If the identity of such an occupant is disclosed to the~~
15 ~~officer or process server and the occupant is present at~~
16 ~~the premises, the officer or process server shall serve that~~
17 ~~occupant with a copy of the prejudgment claim of right~~
18 ~~to possession attached to a copy of the summons and~~
19 ~~complaint. If personal service cannot be made upon that~~
20 ~~occupant at that time, service may be effected by (1)~~
21 ~~leaving a copy of a prejudgment claim of right to~~
22 ~~possession attached to a copy of the summons and~~
23 ~~complaint addressed to that occupant with a person of~~
24 ~~suitable age and discretion at the premises, (2) affixing~~
25 ~~the same so that it is not readily removable in a~~
26 ~~conspicuous place on the premises in a manner most~~
27 ~~likely to give actual notice to that occupant, and (3)~~
28 ~~sending the same addressed to that occupant by first-class~~
29 ~~mail.~~

30 ~~In addition to the service on an identified occupant, or~~
31 ~~if no occupant is disclosed to the officer or process server,~~
32 ~~or if substituted service is made upon the tenant and~~
33 ~~subtenant, if any, the officer or process server shall serve~~
34 ~~a prejudgment claim of right to possession for all other~~
35 ~~persons who may claim to occupy the premises at the~~
36 ~~time of the filing of the action by (1) leaving a copy of a~~
37 ~~prejudgment claim of right to possession attached to a~~
38 ~~copy of the summons and complaint at the premises at the~~
39 ~~same time service is made upon the tenant and subtenant,~~
40 ~~if any, (2) affixing the same so that it is not readily~~

~~removable in a conspicuous place on the premises so that it is likely to give actual notice to an occupant, and (3) sending the same addressed to “all occupants in care of the named tenant” to the premises by first class mail.~~

~~The person serving process shall state the date of service on the prejudgment claim of right to possession form. However, the absence of the date of service on the prejudgment claim of right to possession does not invalidate the claim.~~

~~(d) Proof of service under this section shall be filed with the court and shall include a statement that service was made pursuant to this section. Service on occupants in accordance with this section shall not alter or affect service upon the tenant or subtenant, if any.~~

~~(e) If an owner or his or her agent has directed and obtained service of a prejudgment claim of right to possession in accordance with this section, no occupant of the premises, whether or not such occupant is named in the judgment for possession, may object to the enforcement of that judgment as prescribed in Section 1174.3.~~

~~(f) A summons and complaint, along with a prejudgment claim of right to possession, may be served by posting in the same manner as provided in Section 415.45.~~

~~(g) The prejudgment claim of right to possession shall be made on the following form:~~

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2
3
4 for Prejudgment Claim of Right to Possession form
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6 as printed on pages 4 to 7 of Chapter 57, 1991 Statutes.
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~~SEC. 4.~~

SEC. 3. Section 484.070 of the Code of Civil Procedure is amended to read:

484.070. (a) If the defendant claims that the personal property described in the plaintiff's application, or a portion of such property, is exempt from attachment, the defendant shall claim the exemption as provided in this section. If the defendant fails to make the claim or makes the claim but fails to prove that the personal property is exempt, the defendant may not later claim the exemption except as provided in Section 482.100.

(b) If the defendant desires to claim at the hearing that real or personal property not described in the plaintiff's application or real property described in the plaintiff's application is exempt from attachment, in whole or in part, the defendant shall claim the exemption as provided in this section. Failure to make the claim does not preclude the defendant from later claiming the exemption. If the claim is made as provided in this section but the defendant fails to prove that the property is exempt from attachment, the defendant may not later claim that the property, or a portion thereof, is exempt except as provided in Section 482.100.

(c) The claim of exemption shall:

(1) Describe the property claimed to be exempt.

(2) Specify the statute section supporting the claim.

(d) The claim of exemption shall be accompanied by an affidavit supporting any factual issues raised by the claim and points and authorities supporting any legal issues raised.

(e) The claim of exemption, together with any supporting affidavit and points and authorities, shall be filed and served on the plaintiff not less than five court days before the date set for the hearing.

(f) If the plaintiff desires to oppose the claim of exemption, the plaintiff shall file and serve on the defendant, not less than two days before the date set for the hearing, a notice of opposition to the claim of exemption, accompanied by an affidavit supporting any factual issues raised and points and authorities supporting

1 any legal issues raised. If the plaintiff does not file and
2 serve a notice of opposition as provided in this
3 subdivision, no writ of attachment shall be issued as to the
4 property claimed to be exempt. If all of the property
5 described in the plaintiff's application is claimed to be
6 exempt and the plaintiff does not file and serve a notice
7 of opposition as provided in this subdivision, no hearing
8 shall be held and no right to attach order or writ of
9 attachment shall be issued and any temporary protective
10 order issued pursuant to Chapter 6 (commencing with
11 Section 486.010) immediately expires.

12 (g) If the plaintiff files and serves a notice of opposition
13 to the claim as provided in this section, the defendant has
14 the burden of proving that the property is exempt from
15 attachment.

16 ~~SEC. 4.2.~~

17 *SEC. 4.* Section 484.350 of the Code of Civil Procedure
18 is amended to read:

19 484.350. (a) If the defendant claims that the property
20 described in the plaintiff's application, or a portion of such
21 property, is exempt from attachment, the defendant may
22 claim the exemption as provided in this section. If the
23 defendant fails to make a claim with respect to personal
24 property, or makes a claim with respect to real or
25 personal property but fails to prove that the property is
26 exempt, the defendant may not later claim the exemption
27 except as provided in Section 482.100.

28 (b) The claim of exemption shall:

29 (1) Describe the property claimed to be exempt.

30 (2) Specify the statute section supporting the claim.

31 (c) The claim of exemption shall be accompanied by
32 an affidavit supporting any factual issues raised by the
33 claim and points and authorities supporting any legal
34 issues raised.

35 (d) The claim of exemption, together with any
36 supporting affidavit and points and authorities, shall be
37 filed and served on the plaintiff not less than five court
38 days before the date set for the hearing.

39 ~~SEC. 4.3.~~

1 *SEC. 5.* Section 569 of the Code of Civil Procedure is
2 amended to read:

3 569. Funds in the hands of a receiver may be
4 deposited in one or more interest bearing accounts in the
5 name and for the benefit of the receivership estate with
6 one or more financial institutions, provided that all of the
7 following conditions are satisfied:

8 (a) The deposits are fully guaranteed or insured under
9 federal law.

10 (b) The financial institution in which the funds are
11 deposited is not a party to the action in which the receiver
12 was appointed.

13 (c) The receiver does not own 1 percent or more in
14 value of the outstanding stock of the financial institution,
15 is not an officer, director, or employee of the financial
16 institution, and is not a sibling, whether by the whole or
17 half-blood, spouse, aunt, uncle, nephew, niece, ancestor,
18 or lineal descendant of an owner, officer, employee, or
19 director.

20 ~~SEC. 4.5.~~

21 *SEC. 6.* Section 701.040 of the Code of Civil
22 Procedure, as amended by Section 5 of Chapter 591 of the
23 Statutes of 1995, is amended to read:

24 701.040. (a) Except as otherwise ordered by the
25 court upon a determination that the judgment creditor's
26 lien has priority over the security interest, if property
27 levied upon is subject to a security interest that attached
28 prior to levy, the property or obligation is subject to
29 enforcement of the security interest without regard to
30 the levy unless the property is in the custody of the
31 levying officer; but, if the execution lien has priority over
32 the security interest, the secured party is liable to the
33 judgment creditor for any proceeds received by the
34 secured party from the property to the extent of the
35 execution lien.

36 (b) After the security interest is satisfied, the secured
37 party shall deliver any excess property, and pay any
38 excess payments or proceeds of property, remaining in
39 the possession of the secured party to the levying officer
40 for the purposes of the levy, as provided in Sections 9502

1 and 9504 of the Commercial Code, unless otherwise
2 ordered by the court or directed by the levying officer.

3 (c) This section shall be repealed on January 1, 2002.

4 ~~SEC. 4.7. Section 703.140 of the Code of Civil~~
5 ~~Procedure is amended to read:~~

6 ~~703.140. (a) In a case under Title 11 of the United~~
7 ~~States Code, all of the exemptions provided by this~~
8 ~~chapter including the homestead exemption, other than~~
9 ~~the provisions of subdivision (b) are applicable regardless~~
10 ~~of whether there is a money judgment against the debtor~~
11 ~~or whether a money judgment is being enforced by~~
12 ~~execution sale or any other procedure, but the~~
13 ~~exemptions provided by subdivision (b) may be elected~~
14 ~~in lieu of all other exemptions provided by this chapter,~~
15 ~~as follows:~~

16 ~~(1) If a husband and wife are joined in the petition,~~
17 ~~they jointly may elect to utilize the applicable exemption~~
18 ~~provisions of this chapter other than the provisions of~~
19 ~~subdivision (b), or to utilize the applicable exemptions~~
20 ~~set forth in subdivision (b), but not both.~~

21 ~~(2) If the petition is filed individually, and not jointly,~~
22 ~~for a husband or a wife, the exemptions provided by this~~
23 ~~chapter other than the provisions of subdivision (b) are~~
24 ~~applicable, except that, if both the husband and the wife~~
25 ~~effectively waive in writing the right to claim, during the~~
26 ~~period the case commenced by filing the petition is~~
27 ~~pending, the exemptions provided by the applicable~~
28 ~~exemption provisions of this chapter, other than~~
29 ~~subdivision (b), in any case commenced by filing a~~
30 ~~petition for either of them under Title 11 of the United~~
31 ~~States Code, then they may elect to instead utilize the~~
32 ~~applicable exemptions set forth in subdivision (b).~~

33 ~~(3) If the petition is filed for an unmarried person, that~~
34 ~~person may elect to utilize the applicable exemption~~
35 ~~provisions of this chapter other than subdivision (b), or~~
36 ~~to utilize the applicable exemptions set forth in~~
37 ~~subdivision (b), but not both.~~

38 ~~(b) The following exemptions may be elected as~~
39 ~~provided in subdivision (a):~~

1 ~~(1) The debtor's aggregate interest, not to exceed~~
2 ~~fifteen thousand dollars (\$15,000) in value, in real~~
3 ~~property or personal property that the debtor or a~~
4 ~~dependent of the debtor uses as a residence, in a~~
5 ~~cooperative that owns property that the debtor or a~~
6 ~~dependent of the debtor uses as a residence, or in a burial~~
7 ~~plot for the debtor or a dependent of the debtor.~~

8 ~~(2) The debtor's interest, not to exceed two thousand~~
9 ~~four hundred dollars (\$2,400) in value, in one motor~~
10 ~~vehicle.~~

11 ~~(3) The debtor's interest, not to exceed four hundred~~
12 ~~dollars (\$400) in value in any particular item, in~~
13 ~~household furnishings, household goods, wearing~~
14 ~~apparel, appliances, books, animals, crops, or musical~~
15 ~~instruments, that are held primarily for the personal,~~
16 ~~family, or household use of the debtor or a dependent of~~
17 ~~the debtor.~~

18 ~~(4) The debtor's aggregate interest, not to exceed one~~
19 ~~thousand dollars (\$1,000) in value, in jewelry held~~
20 ~~primarily for the personal, family, or household use of the~~
21 ~~debtor or a dependent of the debtor.~~

22 ~~(5) The debtor's aggregate interest, not to exceed in~~
23 ~~value eight hundred dollars (\$800) plus any unused~~
24 ~~amount of the exemption provided under paragraph (1),~~
25 ~~in any property.~~

26 ~~(6) The debtor's aggregate interest, not to exceed one~~
27 ~~thousand five hundred dollars (\$1,500) in value, in any~~
28 ~~implements, professional books, or tools of the trade of the~~
29 ~~debtor or the trade of a dependent of the debtor.~~

30 ~~(7) Any unmatured life insurance contract owned by~~
31 ~~the debtor, other than a credit life insurance contract.~~

32 ~~(8) The debtor's aggregate interest, not to exceed in~~
33 ~~value eight thousand dollars (\$8,000) in any accrued~~
34 ~~dividend or interest under, or loan value of, any~~
35 ~~unmatured life insurance contract owned by the debtor~~
36 ~~under which the insured is the debtor or an individual of~~
37 ~~whom the debtor is a dependent.~~

38 ~~(9) Professionally prescribed health aids for the debtor~~
39 ~~or a dependent of the debtor.~~

40 ~~(10) The debtor's right to receive any of the following:~~

1 ~~(A) A social security benefit, unemployment~~
2 ~~compensation, or a local public assistance benefit.~~

3 ~~(B) A veterans' benefit.~~

4 ~~(C) A disability, illness, or unemployment benefit.~~

5 ~~(D) Alimony, support, or separate maintenance, to the~~
6 ~~extent reasonably necessary for the support of the debtor~~
7 ~~and any dependent of the debtor.~~

8 ~~(E) A payment under a stock bonus, pension,~~
9 ~~profitsharing, annuity, individual retirement account, or~~
10 ~~similar plan or contract on account of illness, disability,~~
11 ~~death, age, or length of service, to the extent reasonably~~
12 ~~necessary for the support of the debtor and any~~
13 ~~dependent of the debtor, unless all of the following apply:~~

14 ~~(i) That plan or contract was established by or under~~
15 ~~the auspices of an insider that employed the debtor at the~~
16 ~~time the debtor's rights under the plan or contract arose.~~

17 ~~(ii) The payment is on account of age or length of~~
18 ~~service.~~

19 ~~(iii) That plan or contract does not qualify under~~
20 ~~Section 401(a), 403(a), 403(b), or 408 of the Internal~~
21 ~~Revenue Code of 1986.~~

22 ~~(11) The debtor's right to receive, or property that is~~
23 ~~traceable to, any of the following:~~

24 ~~(A) An award under a crime victim's reparation law.~~

25 ~~(B) A payment on account of the wrongful death of an~~
26 ~~individual of whom the debtor was a dependent, to the~~
27 ~~extent reasonably necessary for the support of the debtor~~
28 ~~and any dependent of the debtor.~~

29 ~~(C) A payment under a life insurance contract that~~
30 ~~insured the life of an individual of whom the debtor was~~
31 ~~a dependent on the date of that individual's death, to the~~
32 ~~extent reasonably necessary for the support of the debtor~~
33 ~~and any dependent of the debtor.~~

34 ~~(D) A payment, not to exceed fifteen thousand dollars~~
35 ~~(\$15,000), on account of personal bodily injury, not~~
36 ~~including pain and suffering or compensation for actual~~
37 ~~pecuniary loss, of the debtor or an individual of whom the~~
38 ~~debtor is a dependent.~~

39 ~~(E) A payment in compensation of loss of future~~
40 ~~earnings of the debtor or an individual of whom the~~

1 ~~debtor is or was a dependent, to the extent reasonably~~
2 ~~necessary for the support of the debtor and any~~
3 ~~dependent of the debtor.~~

4 ~~SEC. 5. Section 704.090 of the Code of Civil Procedure~~
5 ~~is amended to read:~~

6 ~~704.090. (a) The funds of a judgment debtor confined~~
7 ~~in a prison or facility under the jurisdiction of the~~
8 ~~Department of Corrections or the Department of the~~
9 ~~Youth Authority or confined in any county or city jail,~~
10 ~~road camp, industrial farm, or other local correctional~~
11 ~~facility, held in trust for or to the credit of the judgment~~
12 ~~debtor, in an inmate's trust account or similar account by~~
13 ~~the state, county, or city, or any agency thereof, are~~
14 ~~exempt without making a claim in the amount of one~~
15 ~~thousand dollars (\$1,000). If the judgment debtor is~~
16 ~~married, each spouse is entitled to a separate exemption~~
17 ~~under this section or the spouses may combine their~~
18 ~~exemptions. The separate exemption for the nonconfined~~
19 ~~spouse may not be reduced by any amount for the~~
20 ~~reimbursement of court-appointed attorney fees.~~

21 ~~(b) Notwithstanding subdivision (a), if the judgment~~
22 ~~is for a restitution fine or order imposed pursuant to~~
23 ~~subdivision (a) of Section 13967 of the Government Code,~~
24 ~~as operative on or before September 28, 1994, or Section~~
25 ~~1203.04 of the Penal Code, as operative on or before~~
26 ~~August 2, 1995, or Section 1202.4 of the Penal Code, the~~
27 ~~funds held in trust for, or to the credit of, a judgment~~
28 ~~debtor described in subdivision (a) are exempt in the~~
29 ~~amount of three hundred dollars (\$300) without making~~
30 ~~a claim.~~

31 ~~(c) The exemption provided to a confined judgment~~
32 ~~debtor pursuant to this section shall not be applicable to~~
33 ~~any portion of an order for the reimbursement of~~
34 ~~court-appointed attorney fees.~~

35 ~~SEC. 6. Section 904.2 of the Code of Civil Procedure~~
36 ~~is amended to read:~~

37 ~~904.2. An appeal may be taken from a municipal court~~
38 ~~in the following cases:~~

39 ~~(a) From a judgment, except the following:~~

40 ~~(1) An interlocutory judgment.~~

1 ~~(2) A judgment of contempt which is made final and~~
2 ~~conclusive by Section 1222.~~

3 ~~(3) The decision of a court pursuant to Section 53069.4~~
4 ~~of the Government Code.~~

5 ~~(4) The decision of a court pursuant to Section 40230~~
6 ~~of the Vehicle Code.~~

7 ~~(5) The decision of a court pursuant to Section 40256~~
8 ~~of the Vehicle Code.~~

9 ~~(b) From an order made after a judgment made~~
10 ~~appealable by subdivision (a).~~

11 ~~(c) From an order changing or refusing to change the~~
12 ~~place of trial.~~

13 ~~(d) From an order granting a motion to quash service~~
14 ~~of summons or granting a motion to stay or dismiss the~~
15 ~~action on the ground of inconvenient forum.~~

16 ~~(e) From an order granting a new trial or denying a~~
17 ~~motion for judgment notwithstanding the verdict.~~

18 ~~(f) From an order discharging or refusing to discharge~~
19 ~~an attachment or granting a right to attach order.~~

20 ~~(g) From an order granting or dissolving an~~
21 ~~injunction, or refusing to grant or dissolve an injunction.~~

22 ~~(h) From an order appointing a receiver.~~

23 ~~(i) From a judgment of the small claims court.~~

24 SEC. 7. Section 1005 of the Code of Civil Procedure is
25 amended to read:

26 1005. (a) Written notice shall be given, as prescribed
27 in subdivision (b), for the following motions:

28 (1) Notice of Application and Hearing for Writ of
29 Attachment under Section 484.040.

30 (2) Notice of Application and Hearing for Claim and
31 Delivery under Section 512.030.

32 (3) Notice of Hearing for Claim of Exemption under
33 Section 706.105.

34 (4) Motion to Quash Summons pursuant to subdivision
35 (b) of Section 418.10.

36 (5) Motion for Determination of Good Faith
37 Settlement pursuant to Section 877.6.

38 (6) Hearing for Discovery of Peace Officer Personnel
39 Records pursuant to Section 1043 of the Evidence Code.

1 (7) Notice of Hearing of Third-Party Claim pursuant
2 to Section 720.320.

3 (8) Motion for an Order to Attend Deposition more
4 than 150 miles from deponent's residence pursuant to
5 paragraph (3) of subdivision (e) of Section 2025.

6 (9) Notice of Hearing of Application for Relief
7 pursuant to Section 946.6 of the Government Code.

8 (10) Motion to Set Aside Default or Default Judgment
9 and for Leave to Defend Actions pursuant to Section
10 473.5.

11 (11) Motion to Expunge Notice of Pendency of Action
12 pursuant to Section 405.30.

13 (12) Motion to Set Aside Default and for Leave to
14 Amend pursuant to Section 585.5.

15 (13) Any other proceeding under this code in which
16 notice is required and no other time or method is
17 prescribed by law or by court or judge.

18 (b) Unless otherwise ordered or specifically provided
19 by law, all moving and supporting papers shall be served
20 and filed at least 15 calendar days before the time
21 appointed for the hearing. The moving and supporting
22 papers served shall be a copy of the papers *filed or* to be
23 filed with the court. However, if the notice is served by
24 mail, the required 15-day period of notice before the time
25 appointed for the hearing shall be increased by five days
26 if the place of mailing and the place of address are within
27 the State of California, 10 days if either the place of
28 mailing or the place of address is outside the State of
29 California but within the United States, and 20 days if
30 either the place of mailing or the place of address is
31 outside the United States, and if the notice is served by
32 facsimile transmission, express mail, or another method of
33 delivery providing for overnight delivery, the required
34 15-day period of notice before the time appointed for the
35 hearing shall be increased by two court days. Section 1013,
36 which extends the time within which a right may be
37 exercised or an act may be done, does not apply to a notice
38 of motion, papers opposing a motion, or reply papers
39 governed by this section. All papers opposing a motion so
40 noticed shall be filed with the court and a copy served on

1 each party at least five court days, and all reply papers at
2 least two court days before the time appointed for the
3 hearing. Notwithstanding any other provision of this
4 section, all papers opposing a motion and all reply papers
5 shall be served by personal delivery, facsimile
6 transmission, express mail, or other means consistent with
7 the provisions of Sections 1010, 1011, 1012, and 1013, and
8 reasonably calculated to ensure delivery to the other
9 party or parties not later than the close of the next
10 business day after the time the opposing papers or reply
11 papers, as applicable, are filed.

12 The court, or a judge thereof, may prescribe a shorter
13 time.

14 SEC. 8. Section 1985.3 of the Code of Civil Procedure
15 is amended to read:

16 1985.3. (a) For purposes of this section, the following
17 definitions apply:

18 (1) "Personal records" means the original or any copy
19 of books, documents, or other writings pertaining to a
20 consumer and which are maintained by any "witness"
21 which is a physician, chiropractor, veterinarian,
22 veterinary hospital, veterinary clinic, pharmacist,
23 pharmacy, hospital, state or national bank, state or federal
24 association (as defined in Section 5102 of the Financial
25 Code), state or federal credit union, trust company,
26 anyone authorized by this state to make or arrange loans
27 that are secured by real property, security brokerage
28 firm, insurance company, title insurance company,
29 underwritten title company, escrow agent licensed
30 pursuant to Division 6 (commencing with Section 17000)
31 of the Financial Code or exempt from licensure pursuant
32 to Section 17006 of the Financial Code, attorney,
33 accountant, institution of the Farm Credit System, as
34 specified in Section 2002 of Title 12 of the United States
35 Code, or telephone corporation which is a public utility,
36 as defined in Section 216 of the Public Utilities Code, or
37 psychotherapist, as defined in Section 1010 of the
38 Evidence Code, or a private or public preschool,
39 elementary school, or secondary school.

1 (2) “Consumer” means any individual, partnership of
2 five or fewer persons, association, or trust which has
3 transacted business with, or has used the services of, the
4 witness or for whom the witness has acted as agent or
5 fiduciary.

6 (3) “Subpoenaing party” means the person or persons
7 causing a subpoena duces tecum to be issued or served in
8 connection with any civil action or proceeding pursuant
9 to this code, but shall not include the state or local
10 agencies described in Section 7465 of the Government
11 Code, or any entity provided for under Article VI of the
12 California Constitution in any proceeding maintained
13 before an adjudicative body of that entity pursuant to
14 Chapter 4 (commencing with Section 6000) of Division
15 3 of the Business and Professions Code.

16 (4) “Deposition officer” means a person who meets
17 the qualifications specified in paragraph (3) of
18 subdivision (d) of Section 2020.

19 (b) The date specified in a subpoena duces tecum for
20 the production of personal records shall not be less than
21 15 days from the date the subpoena is issued. Prior to the
22 date called for in the subpoena duces tecum for the
23 production of personal records, the subpoenaing party
24 shall serve or cause to be served on the consumer whose
25 records are being sought a copy of the subpoena duces
26 tecum, of the affidavit supporting the issuance of the
27 subpoena, and of the notice described in subdivision (e).
28 This service shall be made as follows:

29 (1) To the consumer personally, or at his or her last
30 known address, or in accordance with Chapter 5
31 (commencing with Section 1010) of Title 14 of Part 3, or,
32 if he or she is a party, to his or her attorney of record. If
33 the consumer is a minor, service shall be made on the
34 minor’s parent, guardian, conservator, or similar
35 fiduciary, or if one of them cannot be located with
36 reasonable diligence, then service shall be made on any
37 person having the care or control of the minor or with
38 whom the minor resides or by whom the minor is
39 employed, and on the minor if the minor is at least 12
40 years of age.

1 (2) Not less than 10 days prior to the date for
2 production specified in the subpoena duces tecum, plus
3 the additional time provided by Section 1013 if service is
4 by mail.

5 (3) At least five days prior to service upon the
6 custodian of the records, plus the additional time
7 provided by Section 1013 if service is by mail.

8 (c) Prior to the production of the records, the
9 subpoenaing party shall do either of the following:

10 (1) Serve or cause to be served upon the witness a
11 proof of personal service or of service by mail attesting to
12 compliance with subdivision (b).

13 (2) Furnish the witness a written authorization to
14 release the records signed by the consumer or by his or
15 her attorney of record. The witness may presume that any
16 attorney purporting to sign the authorization on behalf of
17 the consumer acted with the consent of the consumer.

18 (d) A subpoena duces tecum for the production of
19 personal records shall be served in sufficient time to allow
20 the witness a reasonable time to locate and produce the
21 records or copies thereof.

22 Except as to records subpoenaed for a criminal
23 proceeding or records subpoenaed during trial, a
24 subpoena duces tecum served upon a witness with
25 records in more than one location shall be served no less
26 than 10 days prior to the date specified for production,
27 unless good cause is shown pursuant to subdivision (h).

28 (e) Every copy of the subpoena duces tecum and
29 affidavit served on a consumer or his or her attorney in
30 accordance with subdivision (b) shall be accompanied by
31 a notice, in a typeface designed to call attention to the
32 notice, indicating that (1) records about the consumer
33 are being sought from the witness named on the
34 subpoena; (2) if the consumer objects to the witness
35 furnishing the records to the party seeking the records,
36 the consumer must file papers with the court or serve a
37 written objection as provided in subdivision (g) prior to
38 the date specified for production on the subpoena; and
39 (3) if the party who is seeking the records will not agree
40 in writing to cancel or limit the subpoena, an attorney

1 should be consulted about the consumer's interest in
2 protecting his or her rights of privacy. If a notice of taking
3 of deposition is also served, that other notice may be set
4 forth in a single document with the notice required by
5 this subdivision.

6 (f) A subpoena duces tecum for personal records
7 maintained by a telephone corporation which is a public
8 utility, as defined in Section 216 of the Public Utilities
9 Code, shall not be valid or effective unless it includes a
10 consent to release, signed by the consumer whose records
11 are requested, as required by Section 2891 of the Public
12 Utilities Code.

13 (g) Any consumer whose personal records are sought
14 by a subpoena duces tecum and who is a party to the civil
15 action in which this subpoena duces tecum is served may,
16 prior to the date for production, bring a motion under
17 Section 1987.1 to quash or modify the subpoena duces
18 tecum. Notice of the bringing of that motion shall be
19 given to the witness and deposition officer at least five
20 days prior to production. The failure to provide notice to
21 the deposition officer shall not invalidate the motion to
22 quash or modify the subpoena duces tecum.

23 Any other consumer whose personal records are sought
24 by a subpoena duces tecum may, prior to the date of
25 production, serve on the requesting party and the witness
26 a written objection that specifies the specific grounds on
27 which production of the personal records should be
28 prohibited.

29 No witness or deposition officer shall be required to
30 produce personal records after receipt of notice that such
31 a motion has been brought, except upon order of the
32 court in which the action is pending or by agreement of
33 the parties, witnesses, and consumers affected. No
34 witness shall be required to produce personal records
35 after service of a written objection by a nonparty
36 consumer, except upon order of the court in which the
37 action is pending or by agreement of the parties,
38 witnesses, and consumers affected.

39 The party requesting a consumer's personal records
40 may bring a motion under Section 1987.1 to enforce the

1 subpoena within 20 days of service of the written
2 objection. The motion shall be accompanied by a
3 declaration showing a reasonable and good faith attempt
4 at informal resolution of the dispute between the party
5 requesting the personal records and the consumer or the
6 consumer's attorney.

7 (h) Upon good cause shown and provided that the
8 rights of witnesses and consumers are preserved, a
9 subpoenaing party shall be entitled to obtain an order
10 shortening the time for service of a subpoena duces
11 tecum or waiving the requirements of subdivision (b)
12 where due diligence by the subpoenaing party has been
13 shown.

14 (i) Nothing contained in this section shall be construed
15 to apply to any subpoena duces tecum which does not
16 request the records of any particular consumer or
17 consumers and which requires a custodian of records to
18 delete all information which would in any way identify
19 any consumer whose records are to be produced.

20 (j) This section shall not apply to proceedings
21 conducted under Division 1 (commencing with Section
22 50), Division 4 (commencing with Section 3200), Division
23 4.5 (commencing with Section 6100), or Division 4.7
24 (commencing with Section 6200) of the Labor Code.

25 (k) Failure to comply with this section shall be
26 sufficient basis for the witness to refuse to produce the
27 personal records sought by a subpoena duces tecum.

28 SEC. 8.5. Section 1985.6 of the Code of Civil
29 Procedure is amended to read:

30 1985.6. (a) For purposes of this section, the following
31 definitions apply:

32 (1) "Employment records" means the original or any
33 copy of books, documents, or other writings pertaining to
34 the employment of any employee maintained by the
35 current or former employer of the employee.

36 (2) "Employee" means any individual who is or has
37 been employed by a witness subject to a subpoena duces
38 tecum.

39 (3) "Subpoenaing party" means the person or persons
40 causing a subpoena duces tecum to be issued or served in

1 connection with any civil action or proceeding, but shall
2 not include the state or local agencies described in
3 Section 7465 of the Government Code, or any entity
4 provided for under Article VI of the California
5 Constitution in any proceeding maintained before an
6 adjudicative body of that entity pursuant to Chapter 4
7 (commencing with Section 6000) of Division 3 of the
8 Business and Professions Code.

9 (4) “Deposition officer” means a person who meets
10 the qualifications specified in paragraph (3) of
11 subdivision (d) of Section 2020.

12 (b) The date specified in a subpoena duces tecum for
13 the production of employment records shall not be less
14 than 15 days from the date the subpoena is issued. Prior
15 to the date called for in the subpoena duces tecum of the
16 production of employment records, the subpoenaing
17 party shall serve or cause to be served on the employee
18 whose records are being sought a copy of: the subpoena
19 duces tecum; the affidavit supporting the issuance of the
20 subpoena, if any; and the notice described in subdivision
21 (e). This service shall be made as follows:

22 (1) To the employee personally, or at his or her last
23 known address, or in accordance with Chapter 5
24 (commencing with Section 1010) of Title 14 of Part 3, or,
25 if he or she is a party, to his or her attorney of record. If
26 the employee is a minor, service shall be made on the
27 minor’s parent, guardian, conservator, or similar
28 fiduciary, or if one of them cannot be located with
29 reasonable diligence, then service shall be made on any
30 person having the care or control of the minor, or with
31 whom the minor resides, and on the minor if the minor
32 is at least 12 years of age.

33 (2) Not less than 10 days prior to the date for
34 production specified in the subpoena duces tecum, plus
35 the additional time provided by Section 1013 if service is
36 by mail.

37 (3) At least five days prior to service upon the
38 custodian of the employment records, plus the additional
39 time provided by Section 1013 if service is by mail.

1 (c) Prior to the production of the records, the
2 subpoenaing party shall either:

3 (1) Serve or cause to be served upon the witness a
4 proof of personal service or of service by mail attesting to
5 compliance with subdivision (b).

6 (2) Furnish the witness a written authorization to
7 release the records signed by the employee or by his or
8 her attorney of record. The witness may presume that the
9 attorney purporting to sign the authorization on behalf of
10 the employee acted with the consent of the employee.

11 (d) A subpoena duces tecum for the production of
12 employment records shall be served in sufficient time to
13 allow the witness a reasonable time to locate and produce
14 the records or copies thereof.

15 Except as to records subpoenaed for a criminal
16 proceeding or records subpoenaed during trial, a
17 subpoena duces tecum served upon a witness with
18 records in more than one location shall be served no less
19 than 10 days prior to the date specified for production,
20 unless good cause is shown pursuant to subdivision (g).

21 (e) Every copy of the subpoena duces tecum and
22 affidavit served on an employee or his or her attorney in
23 accordance with subdivision (b) shall be accompanied by
24 a notice, in a typeface designed to call attention to the
25 notice, indicating that (1) employment records about the
26 employee are being sought from the witness named on
27 the subpoena; (2) the employment records may be
28 protected by a right of privacy; (3) if the employee
29 objects to the witness furnishing the records to the party
30 seeking the records the employee shall file papers with
31 the court prior to the date specified for production on the
32 subpoena; and (4) if the subpoenaing party does not
33 agree in writing to cancel or limit the subpoena, an
34 attorney should be consulted about the employee's
35 interest in protecting his or her rights of privacy. If a
36 notice of taking of deposition is also served, that other
37 notice may be set forth in a single document with the
38 notice required by this subdivision.

39 (f) Any employee whose employment records are
40 sought by a subpoena duces tecum may, prior to the date

1 for production, bring a motion under Section 1987.1 to
2 quash or modify the subpoena duces tecum. Notice of the
3 bringing of that motion shall be given to the witness and
4 the deposition officer at least five days prior to
5 production. The failure to provide notice to the
6 deposition officer shall not invalidate the motion to quash
7 or modify the subpoena duces tecum.

8 Any nonparty employee whose employment records
9 are sought by a subpoena duces tecum may, prior to the
10 date of production, serve on the requesting party and the
11 witness a written objection that specifies the specific
12 grounds on which production of the employment records
13 should be prohibited.

14 No witness or deposition officer shall be required to
15 produce employment records after receipt of notice that
16 such a motion has been brought, except upon order of the
17 court in which the action is pending or by agreement of
18 the parties, witnesses, and employees affected. No
19 witness shall be required to produce employment records
20 after service of a written objection by a nonparty
21 employee, except upon order of the court in which the
22 action is pending or by agreement of the parties,
23 witnesses, and employees affected.

24 The party requesting an employee's employment
25 records may bring a motion under subdivision (c) of
26 Section 1987 to enforce the subpoena within 20 days of
27 service of the written objection. The motion shall be
28 accompanied by a declaration showing a reasonable and
29 good faith attempt at informal resolution of the dispute
30 between the party requesting the employment records
31 and the employee or the employee's attorney.

32 (g) Upon good cause shown and provided that the
33 rights of witness and employees are preserved, a
34 subpoenaing party shall be entitled to obtain an order
35 shortening the time for service of a subpoena duces
36 tecum or waiving the requirements of subdivision (b)
37 where due diligence by the subpoenaing party has been
38 shown.

39 (h) Nothing contained in this section shall be
40 construed to apply to any subpoena duces tecum which

1 does not request the records of any particular employee
2 or employees and which requires a custodian of records
3 to delete all information which would in any way identify
4 any employee whose records are to be produced.

5 (i) This section shall not apply to proceedings
6 conducted under Division 1 (commencing with Section
7 50), Division 4 (commencing with Section 3200), Division
8 4.5 (commencing with Section 6100), or Division 4.7
9 (commencing with Section 6200) of the Labor Code.

10 (j) Failure to comply with this section shall be
11 sufficient basis for the witness to refuse to produce the
12 employment records sought by subpoena duces tecum.

13 SEC. 9. Section 2024 of the Code of Civil Procedure is
14 amended to read:

15 2024. (a) Except as otherwise provided in this
16 section, any party shall be entitled as a matter of right to
17 complete discovery proceedings on or before the 30th
18 day, and to have motions concerning discovery heard on
19 or before the 15th day, before the date initially set for the
20 trial of the action. As used in this section, discovery is
21 considered completed on the day a response is due or on
22 the day a deposition begins. Except as provided in
23 subdivision (e), a continuance or postponement of the
24 trial date does not operate to reopen discovery
25 proceedings.

26 (b) The time limit on completing discovery in an
27 action to be arbitrated under Chapter 2.5 (commencing
28 with Section 1141.10) of Title 3 of Part 3 is subject to
29 Judicial Council Rule. After an award in a case ordered to
30 judicial arbitration, completion of discovery is limited by
31 Section 1141.24.

32 (c) This section does not apply to (1) summary
33 proceedings for obtaining possession of real property
34 governed by Chapter 4 (commencing with Section 1159)
35 of Title 3 of Part 3, in which discovery shall be completed
36 on or before the fifth day before the date set for trial
37 except as provided in subdivisions (e) and (f), or (2)
38 eminent domain proceedings governed by Title 7
39 (commencing with Section 1230.010) of Part 3.



1 (d) Any party shall be entitled as a matter of right to
2 complete discovery proceedings pertaining to a witness
3 identified under Section 2034 on or before the 15th day,
4 and to have motions concerning that discovery heard on
5 or before the 10th day, before the date initially set for the
6 trial of the action.

7 (e) On motion of any party, the court may grant leave
8 to complete discovery proceedings, or to have a motion
9 concerning discovery heard, closer to the initial trial date,
10 or to reopen discovery after a new trial date has been set.
11 This motion shall be accompanied by a declaration stating
12 facts showing a reasonable and good faith attempt at an
13 informal resolution of each issue presented by the motion.

14 In exercising its discretion to grant or deny this motion,
15 the court shall take into consideration any matter
16 relevant to the leave requested, including, but not limited
17 to, the following:

18 (1) The necessity and the reasons for the discovery.

19 (2) The diligence or lack of diligence of the party
20 seeking the discovery or the hearing of a discovery
21 motion, and the reasons that the discovery was not
22 completed or that the discovery motion was not heard
23 earlier.

24 (3) Any likelihood that permitting the discovery or
25 hearing the discovery motion will prevent the case from
26 going to trial on the date set, or otherwise interfere with
27 the trial calendar, or result in prejudice to any other
28 party.

29 (4) The length of time that has elapsed between any
30 date previously set, and the date presently set, for the trial
31 of the action.

32 The court shall impose a monetary sanction under
33 Section 2023 against any party, person, or attorney who
34 unsuccessfully makes or opposes a motion to extend or to
35 reopen discovery, unless it finds that the one subject to
36 the sanction acted with substantial justification or that
37 other circumstances make the imposition of the sanction
38 unjust.

39 (f) Parties to the action may, with the consent of any
40 party affected by it, enter into an agreement to extend

1 the time for the completion of discovery proceedings or
2 for the hearing of motions concerning discovery, or to
3 reopen discovery after a new date for trial of the action
4 has been set. This agreement may be informal, but it shall
5 be confirmed in a writing that specifies the extended
6 date. In no event shall this agreement require a court to
7 grant a continuance or postponement of the trial of the
8 action.

9 (g) When the last day to perform or complete any act
10 provided for in this article falls on a Saturday, Sunday, or
11 holiday as specified in Section 10, the time limit is
12 extended until the next day not a Saturday, Sunday, or
13 holiday.

14 SEC. 9.05. Section 2025 of the Code of Civil Procedure
15 is amended to read:

16 2025. (a) Any party may obtain discovery within the
17 scope delimited by Section 2017, and subject to the
18 restrictions set forth in Section 2019, by taking in
19 California the oral deposition of any person, including any
20 party to the action. The person deposed may be a natural
21 person, an organization such as a public or private
22 corporation, a partnership, an association, or a
23 governmental agency.

24 (b) Subject to subdivisions (f) and (t), an oral
25 deposition may be taken as follows:

26 (1) The defendant may serve a deposition notice
27 without leave of court at any time after that defendant
28 has been served or has appeared in the action, whichever
29 occurs first.

30 (2) The plaintiff may serve a deposition notice without
31 leave of court on any date that is 20 days after the service
32 of the summons on, or appearance by, any defendant.
33 However, on motion with or without notice, the court, for
34 good cause shown, may grant to a plaintiff leave to serve
35 a deposition notice on an earlier date.

36 (c) A party desiring to take the oral deposition of any
37 person shall give notice in writing in the manner set forth
38 in subdivision (d). However, where under subdivision
39 (d) of Section 2020 only the production by a nonparty of
40 business records for copying is desired, a copy of the

1 deposition subpoena shall serve as the notice of
2 deposition. The notice of deposition shall be given to
3 every other party who has appeared in the action. The
4 deposition notice, or the accompanying proof of service,
5 shall list all the parties or attorneys for parties on whom
6 it is served.

7 Where, as defined in subdivision (a) of Section 1985.3,
8 the party giving notice of the deposition is a subpoenaing
9 party, and the deponent is a witness commanded by a
10 deposition subpoena to produce personal records of a
11 consumer, the subpoenaing party shall serve on that
12 consumer (1) a notice of the deposition, (2) the notice of
13 privacy rights specified in subdivision (e) of Section
14 1985.3 and in Section 1985.6, and (3) a copy of the
15 deposition subpoena.

16 (d) The deposition notice shall state all of the
17 following:

18 (1) The address where the deposition will be taken.

19 (2) The date of the deposition, selected under
20 subdivision (f), and the time it will commence.

21 (3) The name of each deponent, and the address and
22 telephone number, if known, of any deponent who is not
23 a party to the action. If the name of the deponent is not
24 known, the deposition notice shall set forth instead a
25 general description sufficient to identify the person or
26 particular class to which the person belongs.

27 (4) The specification with reasonable particularity of
28 any materials or category of materials to be produced by
29 the deponent.

30 (5) Any intention to record the testimony by
31 audiotape or videotape, in addition to recording the
32 testimony by the stenographic method as required by
33 paragraph (1) of subdivision (l).

34 (6) Any intention to reserve the right to use at trial a
35 videotape deposition of a treating or consulting physician
36 or of any expert witness under paragraph (4) of
37 subdivision (u). In this event, the operator of the
38 videotape camera shall be a person who is authorized to
39 administer an oath, and shall not be financially interested

1 in the action or be a relative or employee of any attorney
2 of any of the parties.

3 If the deponent named is not a natural person, the
4 deposition notice shall describe with reasonable
5 particularity the matters on which examination is
6 requested. In that event, the deponent shall designate
7 and produce at the deposition those of its officers,
8 directors, managing agents, employees, or agents who are
9 most qualified to testify on its behalf as to those matters
10 to the extent of any information known or reasonably
11 available to the deponent. A deposition subpoena shall
12 advise a nonparty deponent of its duty to make this
13 designation, and shall describe with reasonable
14 particularity the matters on which examination is
15 requested.

16 If the attendance of the deponent is to be compelled by
17 service of a deposition subpoena under Section 2020, an
18 identical copy of that subpoena shall be served with the
19 deposition notice.

20 (e) (1) The deposition of a natural person, whether or
21 not a party to the action, shall be taken at a place that is,
22 at the option of the party giving notice of the deposition,
23 either within 75 miles of the deponent's residence, or
24 within the county where the action is pending and within
25 150 miles of the deponent's residence, unless the court
26 orders otherwise under paragraph (3).

27 (2) The deposition of an organization that is a party to
28 the action shall be taken at a place that is, at the option
29 of the party giving notice of the deposition, either within
30 75 miles of the organization's principal executive or
31 business office in California, or within the county where
32 the action is pending and within 150 miles of that office.
33 The deposition of any other organization shall be taken
34 within 75 miles of the organization's principal executive
35 or business office in California, unless the organization
36 consents to a more distant place. If the organization has
37 not designated a principal executive or business office in
38 California, the deposition shall be taken at a place that is,
39 at the option of the party giving notice of the deposition,
40 either within the county where the action is pending, or

1 within 75 miles of any executive or business office in
2 California of the organization.

3 (3) A party desiring to take the deposition of a natural
4 person who is a party to the action or an officer, director,
5 managing agent, or employee of a party may make a
6 motion for an order that the deponent attend for
7 deposition at a place that is more distant than that
8 permitted under paragraph (1). This motion shall be
9 accompanied by a declaration stating facts showing a
10 reasonable and good faith attempt at an informal
11 resolution of any issue presented by the motion.

12 In exercising its discretion to grant or deny this motion,
13 the court shall take into consideration any factor tending
14 to show whether the interests of justice will be served by
15 requiring the deponent's attendance at that more distant
16 place, including, but not limited to, the following:

17 (A) Whether the moving party selected the forum.

18 (B) Whether the deponent will be present to testify at
19 the trial of the action.

20 (C) The convenience of the deponent.

21 (D) The feasibility of conducting the deposition by
22 written questions under Section 2028, or of using a
23 discovery method other than a deposition.

24 (E) The number of depositions sought to be taken at
25 a place more distant than that permitted under
26 paragraph (1).

27 (F) The expense to the parties of requiring the
28 deposition to be taken within the distance permitted
29 under paragraph (1).

30 (G) The whereabouts of the deponent at the time for
31 which the deposition is scheduled.

32 The order may be conditioned on the advancement by
33 the moving party of the reasonable expenses and costs to
34 the deponent for travel to the place of deposition.

35 The court shall impose a monetary sanction under
36 Section 2023 against any party, person, or attorney who
37 unsuccessfully makes or opposes a motion to increase
38 travel limits for party deponent, unless it finds that the
39 one subject to the sanction acted with substantial

1 justification or that other circumstances make the
2 imposition of the sanction unjust.

3 (f) An oral deposition shall be scheduled for a date at
4 least 10 days after service of the deposition notice. If, as
5 defined in subdivision (a) of Section 1985.3, the party
6 giving notice of the deposition is a subpoenaing party, and
7 the deponent is a witness commanded by a deposition
8 subpoena to produce personal records of a consumer, the
9 deposition shall be scheduled for a date at least 20 days
10 after issuance of that subpoena. However, in unlawful
11 detainer actions, an oral deposition shall be scheduled for
12 a date at least five days after service of the deposition
13 notice, but not later than five days before trial.

14 On motion or ex parte application of any party or
15 deponent, for good cause shown, the court may shorten
16 or extend the time for scheduling a deposition, or may
17 stay its taking until the determination of a motion for a
18 protective order under subdivision (i).

19 (g) Any party served with a deposition notice that
20 does not comply with subdivisions (b) to (f), inclusive,
21 waives any error or irregularity unless that party
22 promptly serves a written objection specifying that error
23 or irregularity at least three calendar days prior to the
24 date for which the deposition is scheduled, on the party
25 seeking to take the deposition and any other attorney or
26 party on whom the deposition notice was served. If an
27 objection is made three calendar days before the
28 deposition date, the objecting party shall make personal
29 service of that objection pursuant to Section 1011 on the
30 party who gave notice of the deposition. Any deposition
31 taken after the service of a written objection shall not be
32 used against the objecting party under subdivision (u) if
33 the party did not attend the deposition and if the court
34 determines that the objection was a valid one.

35 In addition to serving this written objection, a party
36 may also move for an order staying the taking of the
37 deposition and quashing the deposition notice. This
38 motion shall be accompanied by a declaration stating
39 facts showing a reasonable and good faith attempt at an
40 informal resolution of any issue presented by the motion.



1 The taking of the deposition is stayed pending the
2 determination of this motion.

3 The court shall impose a monetary sanction under
4 Section 2023 against any party, person, or attorney who
5 unsuccessfully makes or opposes a motion to quash a
6 deposition notice, unless it finds that the one subject to
7 the sanction acted with substantial justification or that
8 other circumstances make the imposition of the sanction
9 unjust.

10 (h) (1) The service of a deposition notice under
11 subdivision (c) is effective to require any deponent who
12 is a party to the action or an officer, director, managing
13 agent, or employee of a party to attend and to testify, as
14 well as to produce any document or tangible thing for
15 inspection and copying.

16 (2) The attendance and testimony of any other
17 deponent, as well as the production by the deponent of
18 any document or tangible thing for inspection and
19 copying, requires the service on the deponent of a
20 deposition subpoena under Section 2020.

21 (i) Before, during, or after a deposition, any party, any
22 deponent, or any other affected natural person or
23 organization may promptly move for a protective order.
24 The motion shall be accompanied by a declaration stating
25 facts showing a reasonable and good faith attempt at an
26 informal resolution of each issue presented by the motion.

27 The court, for good cause shown, may make any order
28 that justice requires to protect any party, deponent, or
29 other natural person or organization from unwarranted
30 annoyance, embarrassment, or oppression, or undue
31 burden and expense. This protective order may include,
32 but is not limited to, one or more of the following
33 directions:

34 (1) That the deposition not be taken at all.

35 (2) That the deposition be taken at a different time.

36 (3) That a videotape deposition of a treating or
37 consulting physician or of any expert witness, intended
38 for possible use at trial under paragraph (4) of subdivision
39 (u), be postponed until the moving party has had an
40 adequate opportunity to prepare, by discovery

1 deposition of the deponent, or other means, for
2 cross-examination.

3 (4) That the deposition be taken at a place other than
4 that specified in the deposition notice, if it is within a
5 distance permitted by subdivision (e).

6 (5) That the deposition be taken only on certain
7 specified terms and conditions.

8 (6) That the deponent's testimony be taken by
9 written, instead of oral, examination.

10 (7) That the method of discovery be interrogatories to
11 a party instead of an oral deposition.

12 (8) That the testimony be recorded in a manner
13 different from that specified in the deposition notice.

14 (9) That certain matters not be inquired into.

15 (10) That the scope of the examination be limited to
16 certain matters.

17 (11) That all or certain of the writings or tangible
18 things designated in the deposition notice not be
19 produced, inspected, or copied.

20 (12) That designated persons, other than the parties to
21 the action and their officers and counsel, be excluded
22 from attending the deposition.

23 (13) That a trade secret or other confidential research,
24 development, or commercial information not be
25 disclosed or be disclosed only to specified persons or only
26 in a specified way.

27 (14) That the parties simultaneously file specified
28 documents enclosed in sealed envelopes to be opened as
29 directed by the court.

30 (15) That the deposition be sealed and thereafter
31 opened only on order of the court.

32 If the motion for a protective order is denied in whole
33 or in part, the court may order that the deponent provide
34 or permit the discovery against which protection was
35 sought on those terms and conditions that are just.

36 The court shall impose a monetary sanction under
37 Section 2023 against any party, person, or attorney who
38 unsuccessfully makes or opposes a motion for a protective
39 order, unless it finds that the one subject to the sanction

1 acted with substantial justification or that other
2 circumstances make the imposition of the sanction unjust.

3 (j) (1) If the party giving notice of a deposition fails to
4 attend or proceed with it, the court shall impose a
5 monetary sanction under Section 2023 against that party,
6 or the attorney for that party, or both, and in favor of any
7 party attending in person or by attorney, unless it finds
8 that the one subject to the sanction acted with substantial
9 justification or that other circumstances make the
10 imposition of the sanction unjust.

11 (2) If a deponent does not appear for a deposition
12 because the party giving notice of the deposition failed to
13 serve a required deposition subpoena, the court shall
14 impose a monetary sanction under Section 2023 against
15 that party, or the attorney for that party, or both, in favor
16 of any other party who, in person or by attorney, attended
17 at the time and place specified in the deposition notice in
18 the expectation that the deponent's testimony would be
19 taken, unless the court finds that the one subject to the
20 sanction acted with substantial justification or that other
21 circumstances make the imposition of the sanction unjust.

22 If a deponent on whom a deposition subpoena has been
23 served fails to attend a deposition or refuses to be sworn
24 as a witness, the court may impose on the deponent the
25 sanctions described in subdivision (h) of Section 2020.

26 (3) If, after service of a deposition notice, a party to the
27 action or an officer, director, managing agent, or
28 employee of a party, or a person designated by an
29 organization that is a party under subdivision (d),
30 without having served a valid objection under subdivision
31 (g), fails to appear for examination, or to proceed with it,
32 or to produce for inspection any document or tangible
33 thing described in the deposition notice, the party giving
34 the notice may move for an order compelling the
35 deponent's attendance and testimony, and the
36 production for inspection of any document or tangible
37 thing described in the deposition notice. This motion (A)
38 shall set forth specific facts showing good cause justifying
39 the production for inspection of any document or
40 tangible thing described in the deposition notice, and (B)

1 shall be accompanied by a declaration stating facts
2 showing a reasonable and good faith attempt at an
3 informal resolution of each issue presented by it or, when
4 the deponent fails to attend the deposition and produce
5 the documents or things described in the deposition
6 notice, by a declaration stating that the petitioner has
7 contacted the deponent to inquire about the
8 nonappearance. If this motion is granted, the court shall
9 also impose a monetary sanction under Section 2023
10 against the deponent or the party with whom the
11 deponent is affiliated, unless it finds that the one subject
12 to the sanction acted with substantial justification or that
13 other circumstances make the imposition of the sanction
14 unjust. On motion of any other party who, in person or by
15 attorney, attended at the time and place specified in the
16 deposition notice in the expectation that the deponent's
17 testimony would be taken, the court shall also impose a
18 monetary sanction under Section 2023, unless it finds that
19 the one subject to the sanction acted with substantial
20 justification or that other circumstances make the
21 imposition of the sanction unjust.

22 If that party or party-affiliated deponent then fails to
23 obey an order compelling attendance, testimony, and
24 production, the court may make those orders that are just,
25 including the imposition of an issue sanction, an evidence
26 sanction, or a terminating sanction under Section 2023
27 against that party deponent or against the party with
28 whom the deponent is affiliated. In lieu of or in addition
29 to this sanction, the court may impose a monetary
30 sanction under Section 2023 against that deponent or
31 against the party with whom that party deponent is
32 affiliated, and in favor of any party who, in person or by
33 attorney, attended in the expectation that the deponent's
34 testimony would be taken pursuant to that order.

35 (k) Except as provided in paragraph (3) of subdivision
36 (d) of Section 2020, the deposition shall be conducted
37 under the supervision of an officer who is authorized to
38 administer an oath. This officer shall not be financially
39 interested in the action and shall not be a relative or
40 employee of any attorney of any of the parties, or of any

1 of the parties. Any objection to the qualifications of the
2 deposition officer is waived unless made before the
3 deposition begins or as soon thereafter as the ground for
4 that objection becomes known or could be discovered by
5 reasonable diligence.

6 (l) (1) The deposition officer shall put the deponent
7 under oath. Unless the parties agree or the court orders
8 otherwise, the testimony, as well as any stated objections,
9 shall be taken stenographically. The party noticing the
10 deposition may also record the testimony by audiotape or
11 videotape if the notice of deposition stated an intention
12 also to record the testimony by either of those methods,
13 or if all the parties agree that the testimony may also be
14 recorded by either of those methods. Any other party, at
15 that party's expense, may make a simultaneous audiotape
16 or videotape record of the deposition, provided that other
17 party promptly, and in no event less than three calendar
18 days before the date for which the deposition is
19 scheduled, serves a written notice of this intention to
20 audiotape or videotape the deposition testimony on the
21 party or attorney who noticed the deposition, on all other
22 parties or attorneys on whom the deposition notice was
23 served under subdivision (c), and on any deponent whose
24 attendance is being compelled by a deposition subpoena
25 under Section 2020. If this notice is given three calendar
26 days before the deposition date, it shall be made by
27 personal service under Section 1011. Examination and
28 cross-examination of the deponent shall proceed as
29 permitted at trial under the provisions of the Evidence
30 Code.

31 (2) If the deposition is being recorded by means of
32 audiotape or videotape, the following procedure shall be
33 observed:

34 (A) The area used for recording the deponent's oral
35 testimony shall be suitably large, adequately lighted, and
36 reasonably quiet.

37 (B) The operator of the recording equipment shall be
38 competent to set up, operate, and monitor the equipment
39 in the manner prescribed in this subdivision. The
40 operator may be an employee of the attorney taking the

1 deposition unless the operator is also the deposition
2 officer. However, if a videotape of deposition testimony
3 is to be used under paragraph (4) of subdivision (u), the
4 operator of the recording equipment shall be a person
5 who is authorized to administer an oath, and shall not be
6 financially interested in the action or be a relative or
7 employee of any attorney of any of the parties, unless all
8 parties attending the deposition agree on the record to
9 waive these qualifications and restrictions.

10 (C) The operator shall not distort the appearance or
11 the demeanor of participants in the deposition by the use
12 of camera or sound recording techniques.

13 (D) The deposition shall begin with an oral or written
14 statement on camera or on the audiotape that includes
15 the operator's name and business address, the name and
16 business address of the operator's employer, the date,
17 time, and place of the deposition, the caption of the case,
18 the name of the deponent, a specification of the party on
19 whose behalf the deposition is being taken, and any
20 stipulations by the parties.

21 (E) Counsel for the parties shall identify themselves
22 on camera or on the audiotape.

23 (F) The oath shall be administered to the deponent on
24 camera or on the audiotape.

25 (G) If the length of a deposition requires the use of
26 more than one unit of tape, the end of each unit and the
27 beginning of each succeeding unit shall be announced on
28 camera or on the audiotape.

29 (H) At the conclusion of a deposition, a statement shall
30 be made on camera or on the audiotape that the
31 deposition is ended and shall set forth any stipulations
32 made by counsel concerning the custody of the audiotape
33 or videotape recording and the exhibits, or concerning
34 other pertinent matters.

35 (I) A party intending to offer an audiotaped or
36 videotaped recording of a deposition in evidence under
37 subdivision (u) shall notify the court and all parties in
38 writing of that intent and of the parts of the deposition to
39 be offered within sufficient time for objections to be
40 made and ruled on by the judge to whom the case is



1 assigned for trial or hearing, and for any editing of the
2 tape. Objections to all or part of the deposition shall be
3 made in writing. The court may permit further
4 designations of testimony and objections as justice may
5 require. With respect to those portions of an audiotaped
6 or videotaped deposition that are not designated by any
7 party or that are ruled to be objectionable, the court may
8 order that the party offering the recording of the
9 deposition at the trial or hearing suppress those portions,
10 or that an edited version of the deposition tape be
11 prepared for use at the trial or hearing. The original
12 audiotape or videotape of the deposition shall be
13 preserved unaltered. If no stenographic record of the
14 deposition testimony has previously been made, the party
15 offering a videotape or an audiotape recording of that
16 testimony under subdivision (u) shall accompany that
17 offer with a stenographic transcript prepared from that
18 recording.

19 (3) In lieu of participating in the oral examination,
20 parties may transmit written questions in a sealed
21 envelope to the party taking the deposition for delivery
22 to the deposition officer, who shall unseal the envelope
23 and propound them to the deponent after the oral
24 examination has been completed.

25 (m) (1) The protection of information from discovery
26 on the ground that it is privileged or that it is protected
27 work product under Section 2018 is waived unless a
28 specific objection to its disclosure is timely made during
29 the deposition.

30 (2) Errors and irregularities of any kind occurring at
31 the oral examination that might be cured if promptly
32 presented are waived unless a specific objection to them
33 is timely made during the deposition. These errors and
34 irregularities include, but are not limited to, those
35 relating to the manner of taking the deposition, to the
36 oath or affirmation administered, to the conduct of a
37 party, attorney, deponent, or deposition officer, or to the
38 form of any question or answer. Unless the objecting
39 party demands that the taking of the deposition be
40 suspended to permit a motion for a protective order

1 under subdivision (n), the deposition shall proceed
2 subject to the objection.

3 (3) Objections to the competency of the deponent, or
4 to the relevancy, materiality, or admissibility at trial of the
5 testimony or of the materials produced are unnecessary
6 and are not waived by failure to make them before or
7 during the deposition.

8 (4) If a deponent fails to answer any question or to
9 produce any document or tangible thing under the
10 deponent's control that is specified in the deposition
11 notice or a deposition subpoena, the party seeking that
12 answer or production may adjourn the deposition or
13 complete the examination on other matters without
14 waiving the right at a later time to move for an order
15 compelling that answer or production under subdivision
16 (o).

17 (n) On demand of any party or the deponent, the
18 deposition officer shall suspend the taking of testimony to
19 enable that party or deponent to move for a protective
20 order on the ground that the examination is being
21 conducted in bad faith or in a manner that unreasonably
22 annoys, embarrasses, or oppresses that deponent or party.
23 This motion shall be accompanied by a declaration stating
24 facts showing a reasonable and good faith attempt at an
25 informal resolution of each issue presented by the motion.
26 The court, for good cause shown, may terminate the
27 examination or may limit the scope and manner of taking
28 the deposition as provided in subdivision (i). If the order
29 terminates the examination, the deposition shall not
30 thereafter be resumed, except on order of the court.

31 The court shall impose a monetary sanction under
32 Section 2023 against any party, person, or attorney who
33 unsuccessfully makes or opposes a motion for this
34 protective order, unless it finds that the one subject to the
35 sanction acted with substantial justification or that other
36 circumstances make the imposition of the sanction unjust.

37 (o) If a deponent fails to answer any question or to
38 produce any document or tangible thing under the
39 deponent's control that is specified in the deposition
40 notice or a deposition subpoena, the party seeking

1 discovery may move the court for an order compelling
2 that answer or production. This motion shall be made no
3 later than 60 days after the completion of the record of the
4 deposition, and shall be accompanied by a declaration
5 stating facts showing a reasonable and good faith attempt
6 at an informal resolution of each issue presented by the
7 motion. Notice of this motion shall be given to all parties,
8 and to the deponent either orally at the examination, or
9 by subsequent service in writing. If the notice of the
10 motion is given orally, the deposition officer shall direct
11 the deponent to attend a session of the court at the time
12 specified in the notice. Not less than five days prior to the
13 hearing on this motion, the moving party shall lodge with
14 the court a certified copy of any parts of the stenographic
15 transcript of the deposition that are relevant to the
16 motion. If a deposition is recorded by audiotape or
17 videotape, the moving party is required to lodge a
18 certified copy of a transcript of any parts of the deposition
19 that are relevant to the motion. If the court determines
20 that the answer or production sought is subject to
21 discovery, it shall order that the answer be given or the
22 production be made on the resumption of the deposition.

23 The court shall impose a monetary sanction under
24 Section 2023 against any party, person, or attorney who
25 unsuccessfully makes or opposes a motion to compel
26 answer or production, unless it finds that the one subject
27 to the sanction acted with substantial justification or that
28 other circumstances make the imposition of the sanction
29 unjust.

30 If a deponent fails to obey an order entered under this
31 subdivision, the failure may be considered a contempt of
32 court. In addition, if the disobedient deponent is a party
33 to the action or an officer, director, managing agent, or
34 employee of a party, the court may make those orders
35 that are just against the disobedient party, or against the
36 party with whom the disobedient deponent is affiliated,
37 including the imposition of an issue sanction, an evidence
38 sanction, or a terminating sanction under Section 2023. In
39 lieu of or in addition to this sanction, the court may
40 impose a monetary sanction under Section 2023 against

1 that party deponent or against any party with whom the
2 deponent is affiliated.

3 (p) Unless the parties agree otherwise, the testimony
4 at any deposition recorded by stenographic means shall
5 be transcribed. The party noticing the deposition shall
6 bear the cost of that transcription, unless the court, on
7 motion and for good cause shown, orders that the cost be
8 borne or shared by another party. Any other party, at that
9 party's expense, may obtain a copy of the transcript. If the
10 deposition officer receives a request from a party for an
11 original or a copy of the deposition transcript, or any
12 portion thereof, and the document will be available to
13 that party prior to the time the original or copy would be
14 available to any other party, the deposition officer shall
15 immediately notify all other parties attending the
16 deposition of the request, and shall, upon request by any
17 party other than the party making the original request,
18 make that copy of the full or partial deposition transcript
19 available to all parties at the same time. Stenographic
20 notes of depositions shall be retained by the reporter for
21 a period of not less than eight years from the date of the
22 deposition, where no transcript is produced, and not less
23 than one year from the date on which the transcript is
24 produced. Those notes may be either on paper or
25 electronic media, as long as it allows for satisfactory
26 production of a transcript at any time during the periods
27 specified. At the request of any other party to the action,
28 including a party who did not attend the taking of the
29 deposition testimony, any party who records or causes the
30 recording of that testimony by means of audiotape or
31 videotape shall promptly (1) permit that other party to
32 hear the audiotape or to view the videotape, and (2)
33 furnish a copy of the audiotape or videotape to that other
34 party on receipt of payment of the reasonable cost of
35 making that copy of the tape.

36 If the testimony at the deposition is recorded both
37 stenographically, and by audiotape or videotape, the
38 stenographic transcript is the official record of that
39 testimony for the purpose of the trial and any subsequent
40 hearing or appeal.



1 (q) (1) If the deposition testimony is stenographically
2 recorded, the deposition officer shall send written notice
3 to the deponent and to all parties attending the
4 deposition when the original transcript of the testimony
5 for each session of the deposition is available for reading,
6 correcting, and signing, unless the deponent and the
7 attending parties agree on the record that the reading,
8 correcting, and signing of the transcript of the testimony
9 will be waived or that the reading, correcting, and signing
10 of a transcript of the testimony will take place after the
11 entire deposition has been concluded or at some other
12 specific time. For 30 days following each such notice,
13 unless the attending parties and the deponent agree on
14 the record or otherwise in writing to a longer or shorter
15 time period, the deponent may change the form or the
16 substance of the answer to a question, and may either
17 approve the transcript of the deposition by signing it, or
18 refuse to approve the transcript by not signing it.

19 Alternatively, within this same period, the deponent
20 may change the form or the substance of the answer to
21 any question and may approve or refuse to approve the
22 transcript by means of a letter to the deposition officer
23 signed by the deponent which is mailed by certified or
24 registered mail with return receipt requested. A copy of
25 that letter shall be sent by first-class mail to all parties
26 attending the deposition. For good cause shown, the
27 court may shorten the 30-day period for making changes,
28 approving, or refusing to approve the transcript.

29 The deposition officer shall indicate on the original of
30 the transcript, if the deponent has not already done so at
31 the office of the deposition officer, any action taken by the
32 deponent and indicate on the original of the transcript,
33 the deponent's approval of, or failure or refusal to
34 approve, the transcript. The deposition officer shall also
35 notify in writing the parties attending the deposition of
36 any changes which the deponent timely made in person.
37 If the deponent fails or refuses to approve the transcript
38 within the allotted period, the deposition shall be given
39 the same effect as though it had been approved, subject
40 to any changes timely made by the deponent. However,

1 on a seasonable motion to suppress the deposition,
2 accompanied by a declaration stating facts showing a
3 reasonable and good faith attempt at an informal
4 resolution of each issue presented by the motion, the
5 court may determine that the reasons given for the failure
6 or refusal to approve the transcript require rejection of
7 the deposition in whole or in part.

8 The court shall impose a monetary sanction under
9 Section 2023 against any party, person, or attorney who
10 unsuccessfully makes or opposes a motion to suppress a
11 deposition, unless it finds that the one subject to the
12 sanction acted with substantial justification or that other
13 circumstances make the imposition of the sanction unjust.

14 (2) If there is no stenographic transcription of the
15 deposition, the deposition officer shall send written
16 notice to the deponent and to all parties attending the
17 deposition that the recording is available for review,
18 unless the deponent and all these parties agree on the
19 record to waive the hearing or viewing of an audiotape
20 or videotape recording of the testimony. For 30 days
21 following this notice the deponent, either in person or by
22 signed letter to the deposition officer, may change the
23 substance of the answer to any question.

24 The deposition officer shall set forth in a writing to
25 accompany the recording any changes made by the
26 deponent, as well as either the deponent's signature
27 identifying the deposition as his or her own, or a
28 statement of the deponent's failure to supply the
29 signature, or to contact the officer within the allotted
30 period. When a deponent fails to contact the officer
31 within the allotted period, or expressly refuses by a
32 signature to identify the deposition as his or her own, the
33 deposition shall be given the same effect as though
34 signed. However, on a seasonable motion to suppress the
35 deposition, accompanied by a declaration stating facts
36 showing a reasonable and good faith attempt at an
37 informal resolution of each issue presented by the motion,
38 the court may determine that the reasons given for the
39 refusal to sign require rejection of the deposition in whole
40 or in part.

1 The court shall impose a monetary sanction under
2 Section 2023 against any party, person, or attorney who
3 unsuccessfully makes or opposes a motion to suppress a
4 deposition, unless it finds that the one subject to the
5 sanction acted with substantial justification or that other
6 circumstances make the imposition of the sanction unjust.

7 (r) (1) The deposition officer shall certify on the
8 transcript of the deposition, or in a writing accompanying
9 an audiotaped or videotaped deposition as described in
10 paragraph (2) of subdivision (q), that the deponent was
11 duly sworn and that the transcript or recording is a true
12 record of the testimony given and of any changes made
13 by the deponent.

14 (2) When prepared as a rough draft transcript, the
15 transcript of the deposition may not be certified and may
16 not be used, cited, or transcribed as the certified
17 transcript of the deposition proceedings. The rough draft
18 transcript may not be cited or used in any way or at any
19 time to rebut or contradict the certified transcript of
20 deposition proceedings as provided by the deposition
21 officer.

22 (s) (1) The certified transcript of a deposition shall
23 not be filed with the court. Instead, the deposition officer
24 shall securely seal that transcript in an envelope or
25 package endorsed with the title of the action and marked:
26 “Deposition of (here insert name of deponent),” and
27 shall promptly transmit it to the attorney for the party
28 who noticed the deposition. This attorney shall store it
29 under conditions that will protect it against loss,
30 destruction, or tampering.

31 The attorney to whom the transcript of a deposition is
32 transmitted shall retain custody of it until six months after
33 final disposition of the action. At that time, the transcript
34 may be destroyed, unless the court, on motion of any
35 party and for good cause shown, orders that the transcript
36 be preserved for a longer period.

37 (2) An audiotape or videotape record of deposition
38 testimony, including a certified tape made by an operator
39 qualified under subparagraph (B) of paragraph (2) of
40 subdivision (l), shall not be filed with the court. Instead,

1 the operator shall retain custody of that record and shall
2 store it under conditions that will protect it against loss,
3 destruction, or tampering, and preserve as far as
4 practicable the quality of the tape and the integrity of the
5 testimony and images it contains.

6 At the request of any party to the action, including a
7 party who did not attend the taking of the deposition
8 testimony, or at the request of the deponent, that
9 operator shall promptly (A) permit the one making the
10 request to hear or to view the tape on receipt of payment
11 of a reasonable charge for providing the facilities for
12 hearing or viewing the tape, and (B) furnish a copy of the
13 audiotape or the videotape recording to the one making
14 the request on receipt of payment of the reasonable cost
15 of making that copy of the tape.

16 The attorney or operator who has custody of an
17 audiotape or videotape record of deposition testimony
18 shall retain custody of it until six months after final
19 disposition of the action. At that time, the audiotape or
20 videotape may be destroyed or erased, unless the court,
21 on motion of any party and for good cause shown, orders
22 that the tape be preserved for a longer period.

23 (t) Once any party has taken the deposition of any
24 natural person, including that of a party to the action,
25 neither the party who gave, nor any other party who has
26 been served with a deposition notice pursuant to
27 subdivision (c) may take a subsequent deposition of that
28 deponent. However, for good cause shown, the court may
29 grant leave to take a subsequent deposition, and the
30 parties, with the consent of any deponent who is not a
31 party, may stipulate that a subsequent deposition be
32 taken. This subdivision does not preclude taking one
33 subsequent deposition of a natural person who has
34 previously been examined (1) as a result of that person's
35 designation to testify on behalf of an organization under
36 subdivision (d), or (2) for the limited purpose of
37 discovering pursuant to Section 485.230 the identity,
38 location, and value of property in which the deponent has
39 an interest. This subdivision does not authorize the taking

1 of more than one deposition for the limited purpose of
2 Section 485.230.

3 (u) At the trial or any other hearing in the action, any
4 part or all of a deposition may be used against any party
5 who was present or represented at the taking of the
6 deposition, or who had due notice of the deposition and
7 did not serve a valid objection under subdivision (g), so
8 far as admissible under the rules of evidence applied as
9 though the deponent were then present and testifying as
10 a witness, in accordance with the following provisions:

11 (1) Any party may use a deposition for the purpose of
12 contradicting or impeaching the testimony of the
13 deponent as a witness, or for any other purpose permitted
14 by the Evidence Code.

15 (2) An adverse party may use for any purpose, a
16 deposition of a party to the action, or of anyone who at the
17 time of taking the deposition was an officer, director,
18 managing agent, employee, agent, or designee under
19 subdivision (d) of a party. It is not ground for objection
20 to the use of a deposition of a party under this paragraph
21 by an adverse party that the deponent is available to
22 testify, has testified, or will testify at the trial or other
23 hearing.

24 (3) Any party may use for any purpose the deposition
25 of any person or organization, including that of any party
26 to the action, if the court finds any of the following:

27 (A) The deponent resides more than 150 miles from
28 the place of the trial or other hearing.

29 (B) The deponent, without the procurement or
30 wrongdoing of the proponent of the deposition for the
31 purpose of preventing testimony in open court, is (i)
32 exempted or precluded on the ground of privilege from
33 testifying concerning the matter to which the deponent's
34 testimony is relevant, (ii) disqualified from testifying,
35 (iii) dead or unable to attend or testify because of existing
36 physical or mental illness or infirmity, (iv) absent from
37 the trial or other hearing and the court is unable to
38 compel the deponent's attendance by its process, or (v)
39 absent from the trial or other hearing and the proponent
40 of the deposition has exercised reasonable diligence but

1 has been unable to procure the deponent's attendance by
2 the court's process.

3 (C) Exceptional circumstances exist that make it
4 desirable to allow the use of any deposition in the interests
5 of justice and with due regard to the importance of
6 presenting the testimony of witnesses orally in open
7 court.

8 (4) Any party may use a videotape deposition of a
9 treating or consulting physician or of any expert witness
10 even though the deponent is available to testify if the
11 deposition notice under subdivision (d) reserved the
12 right to use the deposition at trial, and if that party has
13 complied with subparagraph (I) of paragraph (2) of
14 subdivision (I).

15 (5) Subject to the requirements of this section, a party
16 may offer in evidence all or any part of a deposition, and
17 if the party introduces only part of the deposition, any
18 other party may introduce any other parts that are
19 relevant to the parts introduced.

20 (6) Substitution of parties does not affect the right to
21 use depositions previously taken.

22 (7) When an action has been brought in any court of
23 the United States or of any state, and another action
24 involving the same subject matter is subsequently
25 brought between the same parties or their
26 representatives or successors in interest, all depositions
27 lawfully taken and duly filed in the initial action may be
28 used in the subsequent action as if originally taken in that
29 subsequent action. A deposition previously taken may
30 also be used as permitted by the Evidence Code.

31 SEC. 9.1. Section 2031 of the Code of Civil Procedure
32 is amended to read:

33 2031. (a) Any party may obtain discovery within the
34 scope delimited by Section 2017, and subject to the
35 restrictions set forth in Section 2019, by inspecting
36 documents, tangible things, and land or other property
37 that are in the possession, custody, or control of any other
38 party to the action.

39 (1) A party may demand that any other party produce
40 and permit the party making the demand, or someone

1 acting on that party's behalf, to inspect and to copy a
2 document that is in the possession, custody, or control of
3 the party on whom the demand is made.

4 (2) A party may demand that any other party produce
5 and permit the party making the demand, or someone
6 acting on that party's behalf, to inspect and to
7 photograph, test, or sample any tangible things that are
8 in the possession, custody, or control of the party on
9 whom the demand is made.

10 (3) A party may demand that any other party allow the
11 party making the demand, or someone acting on that
12 party's behalf, to enter on any land or other property that
13 is in the possession, custody, or control of the party on
14 whom the demand is made, and to inspect and to
15 measure, survey, photograph, test, or sample the land or
16 other property, or any designated object or operation on
17 it.

18 (b) A defendant may make a demand for inspection
19 without leave of court at any time. A plaintiff may make
20 a demand for inspection without leave of court at any
21 time that is 10 days after the service of the summons on,
22 or in unlawful detainer actions within five days after
23 service of the summons on or appearance by, the party to
24 whom the demand is directed, whichever occurs first.
25 However, on motion with or without notice, the court, for
26 good cause shown, may grant leave to a plaintiff to make
27 an inspection demand at an earlier time.

28 (c) A party demanding an inspection shall number
29 each set of demands consecutively. In the first paragraph
30 immediately below the title of the case, there shall appear
31 the identity of the demanding party, the set number, and
32 the identity of the responding party. Each demand in a
33 set shall be separately set forth, identified by number or
34 letter, and shall do all of the following:

35 (1) Designate the documents, tangible things, or land
36 or other property to be inspected either by specifically
37 describing each individual item or by reasonably
38 particularizing each category of item.

39 (2) Specify a reasonable time for the inspection that is
40 at least 30 days after service of the demand, or in unlawful

1 detainer actions at least five days after service of the
2 demand, unless the court for good cause shown has
3 granted leave to specify an earlier date.

4 (3) Specify a reasonable place for making the
5 inspection, copying, and performing any related activity.

6 (4) Specify any related activity that is being
7 demanded in addition to an inspection and copying, as
8 well as the manner in which that related activity will be
9 performed, and whether that activity will permanently
10 alter or destroy the item involved.

11 (d) The party demanding an inspection shall serve a
12 copy of the inspection demand on the party to whom it
13 is directed and on all other parties who have appeared in
14 the action.

15 (e) When an inspection of documents, tangible things
16 or places has been demanded, the party to whom the
17 demand has been directed, and any other party or
18 affected person or organization, may promptly move for
19 a protective order. This motion shall be accompanied by
20 a declaration stating facts showing a reasonable and good
21 faith attempt at an informal resolution of each issue
22 presented by the motion.

23 The court, for good cause shown, may make any order
24 that justice requires to protect any party or other natural
25 person or organization from unwarranted annoyance,
26 embarrassment, or oppression, or undue burden and
27 expense. This protective order may include, but is not
28 limited to, one or more of the following directions:

29 (1) That all or some of the items or categories of items
30 in the inspection demand need not be produced or made
31 available at all.

32 (2) That the time specified in subdivision (h) to
33 respond to the set of inspection demands, or to a
34 particular item or category in the set, be extended.

35 (3) That the place of production be other than that
36 specified in the inspection demand.

37 (4) That the inspection be made only on specified
38 terms and conditions.

39 (5) That a trade secret or other confidential research,
40 development, or commercial information not be

1 disclosed, or be disclosed only to specified persons or only
2 in a specified way.

3 (6) That the items produced be sealed and thereafter
4 opened only on order of the court.

5 If the motion for a protective order is denied in whole
6 or in part, the court may order that the party to whom the
7 demand was directed provide or permit the discovery
8 against which protection was sought on terms and
9 conditions that are just.

10 The court shall impose a monetary sanction under
11 Section 2023 against any party, person, or attorney who
12 unsuccessfully makes or opposes a motion for a protective
13 order, unless it finds that the one subject to the sanction
14 acted with substantial justification or that other
15 circumstances make the imposition of the sanction unjust.

16 (f) The party to whom an inspection demand has been
17 directed shall respond separately to each item or category
18 of item by a statement that the party will comply with the
19 particular demand for inspection and any related
20 activities, a representation that the party lacks the ability
21 to comply with the demand for inspection of a particular
22 item or category of item, or an objection to the particular
23 demand.

24 In the first paragraph of the response immediately
25 below the title of the case, there shall appear the identity
26 of the responding party, the set number, and the identity
27 of the demanding party. Each statement of compliance,
28 each representation, and each objection in the response
29 shall bear the same number and be in the same sequence
30 as the corresponding item or category in the demand, but
31 the text of that item or category need not be repeated.

32 (1) A statement that the party to whom an inspection
33 demand has been directed will comply with the
34 particular demand shall state that the production,
35 inspection, and related activity demanded will be allowed
36 either in whole or in part, and that all documents or things
37 in the demanded category that are in the possession,
38 custody, or control of that party and to which no objection
39 is being made will be included in the production.

1 Any documents demanded shall either be produced as
2 they are kept in the usual course of business, or be
3 organized and labeled to correspond with the categories
4 in the demand. If necessary, the responding party at the
5 reasonable expense of the demanding party shall,
6 through detection devices, translate any data
7 compilations included in the demand into reasonably
8 usable form.

9 (2) A representation of inability to comply with the
10 particular demand for inspection shall affirm that a
11 diligent search and a reasonable inquiry has been made
12 in an effort to comply with that demand. This statement
13 shall also specify whether the inability to comply is
14 because the particular item or category has never existed,
15 has been destroyed, has been lost, misplaced, or stolen, or
16 has never been, or is no longer, in the possession, custody,
17 or control of the responding party. The statement shall set
18 forth the name and address of any natural person or
19 organization known or believed by that party to have
20 possession, custody, or control of that item or category of
21 item.

22 (3) If only part of an item or category of item in an
23 inspection demand is objectionable, the response shall
24 contain a statement of compliance, or a representation of
25 inability to comply with respect to the remainder of that
26 item or category. If the responding party objects to the
27 demand for inspection of an item or category of item, the
28 response shall (A) identify with particularity any
29 document, tangible thing, or land falling within any
30 category of item in the demand to which an objection is
31 being made, and (B) set forth clearly the extent of, and
32 the specific ground for, the objection. If an objection is
33 based on a claim of privilege, the particular privilege
34 invoked shall be stated. If an objection is based on a claim
35 that the information sought is protected work product
36 under Section 2018, that claim shall be expressly asserted.

37 (g) The party to whom the demand for inspection is
38 directed shall sign the response under oath unless the
39 response contains only objections. If that party is a public
40 or private corporation or a partnership or association or



1 governmental agency, one of its officers or agents shall
2 sign the response under oath on behalf of that party. If the
3 officer or agent signing the response on behalf of that
4 party is an attorney acting in that capacity for a party, that
5 party waives any lawyer-client privilege and any
6 protection for work product under Section 2018 during
7 any subsequent discovery from that attorney concerning
8 the identity of the sources of the information contained
9 in the response. The attorney for the responding party
10 shall sign any responses that contain an objection.

11 (h) Within 30 days after service of an inspection
12 demand, or in unlawful detainer actions within five days
13 of an inspection demand, the party to whom the demand
14 is directed shall serve the original of the response to it on
15 the party making the demand, and a copy of the response
16 on all other parties who have appeared in the action,
17 unless on motion of the party making the demand the
18 court has shortened the time for response, or unless on
19 motion of the party to whom the demand has been
20 directed, the court has extended the time for response. In
21 unlawful detainer actions, the party to whom the demand
22 is directed shall have at least five days from the date of
23 service of the demand to respond unless on motion of the
24 party making the demand the court has shortened the
25 time for the response.

26 (i) The party demanding an inspection and the
27 responding party may agree to extend the time for
28 service of a response to a set of inspection demands, or to
29 particular items or categories of items in a set, to a date
30 beyond that provided in subdivision (h). This agreement
31 may be informal, but it shall be confirmed in a writing
32 that specifies the extended date for service of a response.
33 Unless this agreement expressly states otherwise, it is
34 effective to preserve to the responding party the right to
35 respond to any item or category of item in the demand to
36 which the agreement applies in any manner specified in
37 subdivision (f).

38 (j) The inspection demand and the response to it shall
39 not be filed with the court. The party demanding an
40 inspection shall retain both the original of the inspection

1 demand, with the original proof of service affixed to it,
2 and the original of the sworn response until six months
3 after final disposition of the action. At that time, both
4 originals may be destroyed, unless the court, on motion
5 of any party and for good cause shown, orders that the
6 originals be preserved for a longer period.

7 (k) If a party to whom an inspection demand has been
8 directed fails to serve a timely response to it, that party
9 waives any objection to the demand, including one based
10 on privilege or on the protection for work product under
11 Section 2018. However, the court, on motion, may relieve
12 that party from this waiver on its determination that (1)
13 the party has subsequently served a response that is in
14 substantial compliance with subdivision (f), and (2) the
15 party's failure to serve a timely response was the result of
16 mistake, inadvertence, or excusable neglect.

17 The party making the demand may move for an order
18 compelling response to the inspection demand. The court
19 shall impose a monetary sanction under Section 2023
20 against any party, person, or attorney who unsuccessfully
21 makes or opposes a motion to compel a response to an
22 inspection demand, unless it finds that the one subject to
23 the sanction acted with substantial justification or that
24 other circumstances make the imposition of the sanction
25 unjust. If a party then fails to obey the order compelling
26 a response, the court may make those orders that are just,
27 including the imposition of an issue sanction, an evidence
28 sanction, or a terminating sanction under Section 2023. In
29 lieu of or in addition to that sanction, the court may
30 impose a monetary sanction under Section 2023.

31 (l) If the party demanding an inspection, on receipt of
32 a response to an inspection demand, deems that (1) a
33 statement of compliance with the demand is incomplete,
34 (2) a representation of inability to comply is inadequate,
35 incomplete, or evasive, or (3) an objection in the
36 response is without merit or too general, that party may
37 move for an order compelling further response to the
38 demand. This motion (A) shall set forth specific facts
39 showing good cause justifying the discovery sought by the
40 inspection demand, and (B) shall be accompanied by a

1 declaration stating facts showing a reasonable and good
2 faith attempt at an informal resolution of any issue
3 presented by it.

4 Unless notice of this motion is given within 45 days of
5 the service of the response, or any supplemental
6 response, or on or before any specific later date to which
7 the demanding party and the responding party have
8 agreed in writing, the demanding party waives any right
9 to compel a further response to the inspection demand.

10 The court shall impose a monetary sanction under
11 Section 2023 against any party, person, or attorney who
12 unsuccessfully makes or opposes a motion to compel
13 further response to an inspection demand, unless it finds
14 that the one subject to the sanction acted with substantial
15 justification or that other circumstances make the
16 imposition of the sanction unjust.

17 If a party fails to obey an order compelling further
18 response, the court may make those orders that are just,
19 including the imposition of an issue sanction, an evidence
20 sanction, or a terminating sanction under Section 2023. In
21 lieu of or in addition to that sanction, the court may
22 impose a monetary sanction under Section 2023.

23 (m) If a party filing a response to a demand for
24 inspection under subdivision (f) thereafter fails to permit
25 the inspection in accordance with that party's statement
26 of compliance, the party demanding the inspection may
27 move for an order compelling compliance.

28 The court shall impose a monetary sanction under
29 Section 2023 against any party, person, or attorney who
30 unsuccessfully makes or opposes a motion to compel
31 compliance with an inspection demand, unless it finds
32 that the one subject to the sanction acted with substantial
33 justification or that other circumstances make the
34 imposition of the sanction unjust.

35 If a party then fails to obey an order compelling
36 inspection, the court may make those orders that are just,
37 including the imposition of an issue sanction, an evidence
38 sanction, or a terminating sanction under Section 2023. In
39 lieu of or in addition to that sanction, the court may
40 impose a monetary sanction under Section 2023.

1 SEC. 9.2. Section 8603 of the Commercial Code is
2 amended to read:

3 8603. (a) This division does not affect an action or
4 proceeding commenced before this division becomes
5 operative.

6 (b) If a security interest in a security is perfected at the
7 date this division becomes operative, and the action by
8 which the security interest was perfected would suffice to
9 perfect a security interest under this division, no further
10 action is required to continue perfection. If a security
11 interest in a security is perfected at the date this division
12 takes effect but the action by which the security interest
13 was perfected would not suffice to perfect a security
14 interest under this division, the security interest remains
15 perfected for a period of four months after the operative
16 date and continues perfected thereafter if appropriate
17 action to perfect under this division is taken within that
18 period. If a security interest is perfected at the date this
19 division becomes operative and the security interest can
20 be perfected by filing under Division 9 (commencing
21 with Section 9109), a financing statement signed by the
22 secured party instead of the debtor may be filed within
23 that period to continue perfection or thereafter to perfect
24 and that financing statement shall contain a statement
25 that it is being filed pursuant to this section.

26 SEC. 9.3. Section 9501 of the Commercial Code, as
27 amended by Section 16 of Chapter 124 of the Statutes of
28 1996, is amended to read:

29 9501. (1) When a debtor is in default under a security
30 agreement, a secured party has the rights and remedies
31 provided in this chapter and, except as limited by
32 subdivision (3), those provided in the security
33 agreement. The secured party may reduce his or her
34 claim to judgment, foreclose, or otherwise enforce the
35 security interest by any available judicial procedure. If
36 the collateral is documents the secured party may
37 proceed either as to the documents or as to the goods
38 covered thereby. A secured party in possession has the
39 rights, remedies, and duties provided in Section 9207. The

1 rights and remedies referred to in this subdivision are
2 cumulative.

3 (2) After default, the debtor has the rights and
4 remedies provided in this chapter, those provided in the
5 security agreement, and those provided in Section 9207.

6 (3) To the extent that they give rights to the debtor
7 and impose duties on the secured party, the rules stated
8 in the subdivisions referred to below may not be waived
9 or varied except as provided with respect to compulsory
10 disposition of collateral (subdivision (3) of Section 9504
11 and Section 9505) and with respect to redemption of
12 collateral (Section 9506), but the parties may by
13 agreement determine the standards by which the
14 fulfillment of these rights and duties is to be measured if
15 those standards are not manifestly unreasonable:

16 (a) Subdivision (2) of Section 9502 and subdivision (2)
17 of Section 9504, insofar as they require accounting for
18 surplus proceeds of collateral and deal with the debtor's
19 liability for any deficiency;

20 (b) Subdivision (3) of Section 9504 and subdivision (1)
21 of Section 9505 that deal with disposition of collateral;

22 (c) Subdivision (2) of Section 9505 that deals with
23 acceptance of collateral as discharge of obligation;

24 (d) Section 9506 that deals with redemption of
25 collateral; and

26 (e) Subdivision (1) of Section 9507 that deals with the
27 secured party's liability for failure to comply with this
28 chapter.

29 (4) If an obligation secured by a security interest in
30 personal property or fixtures (Section 9313(1)(a)) is also
31 secured by an interest in real property or an estate
32 therein:

33 (a) The secured party may do any of the following:

34 (i) Proceed, in any sequence, (1) in accordance with
35 the secured party's rights and remedies in respect of real
36 property as to the real property security, and (2) in
37 accordance with this chapter as to the personal property
38 or fixtures.

39 (ii) Proceed in any sequence, as to both some or all of
40 the real property and some or all of the personal property

1 or fixtures in accordance with the secured party's rights
2 and remedies in respect of the real property, by including
3 the portion of the personal property or fixtures selected
4 by the secured party in the judicial or nonjudicial
5 foreclosure of the real property in accordance with the
6 procedures applicable to real property. In proceeding
7 under this subparagraph, (A) no provision of this chapter
8 other than this subparagraph, subparagraph (iii) of
9 paragraph (d), and paragraphs (g) and (h) shall apply to
10 any aspect of the foreclosure; (B) a power of sale under
11 the deed of trust or mortgage shall be exercisable with
12 respect to both the real property and the personal
13 property or fixtures being sold; and (C) the sale may be
14 conducted by the mortgagee under the mortgage or by
15 the trustee under the deed of trust. The secured party
16 shall not be deemed to have elected irrevocably to
17 proceed as to both real property and personal property
18 or fixtures as provided in this subparagraph with respect
19 to any particular property, unless and until that particular
20 property actually has been disposed of pursuant to a
21 unified sale (judicial or nonjudicial) conducted in
22 accordance with the procedures applicable to real
23 property, and then only as to the property so sold.

24 (iii) Proceed, in any sequence, as to part of the
25 personal property or fixtures as provided in subparagraph
26 (i), and as to other of the personal property or fixtures as
27 provided in subparagraph (ii).

28 (b) (i) Except as otherwise provided in paragraph
29 (c), provisions and limitations of any law respecting real
30 property and obligations secured by an interest in real
31 property or an estate therein, including, but not limited
32 to, Section 726 of the Code of Civil Procedure, provisions
33 regarding acceleration or reinstatement of obligations
34 secured by an interest in real property or an estate
35 therein, prohibitions against deficiency judgments,
36 limitations on deficiency judgments based on the value of
37 the collateral, limitations on the right to proceed as to
38 collateral, and requirements that a creditor resort either
39 first or at all to its security, do not in any way apply to
40 either (1) any personal property or fixtures other than

1 personal property or fixtures as to which the secured
2 party has proceeded or is proceeding under
3 subparagraph (ii) of paragraph (a), or (2) the obligation.

4 (ii) Pursuant to, but without limiting subparagraph
5 (i), in the event that an obligation secured by personal
6 property or fixtures would otherwise become
7 unenforceable by reason of Section 726 of the Code of
8 Civil Procedure or any requirement that a creditor resort
9 first to its security, then, notwithstanding that section or
10 any similar requirement, the obligation shall nevertheless
11 remain enforceable to the full extent necessary to permit
12 a secured party to proceed against personal property or
13 fixtures securing the obligation in accordance with the
14 secured party's rights and remedies as permitted under
15 this chapter.

16 (c) (i) Paragraph (b) does not limit the application of
17 Section 580b of the Code of Civil Procedure.

18 (ii) If the secured party commences an action, as
19 defined in Section 22 of the Code of Civil Procedure, and
20 the action seeks a monetary judgment on the debt,
21 paragraph (b) does not prevent the debtor's assertion of
22 any right to require the inclusion in the action of any
23 interest in real property or an estate therein securing the
24 debt. If a monetary judgment on the debt is entered in the
25 action, paragraph (b) does not prevent the debtor's
26 assertion of the subsequent unenforceability of the
27 encumbrance on any interest in real property or an estate
28 therein securing the debt and not included in the action.

29 (iii) Nothing in paragraph (b) shall be construed to
30 excuse compliance with Section 2924c of the Civil Code
31 as a prerequisite to the sale of real property, but that
32 section has no application to the right of a secured party
33 to proceed as to personal property or fixtures except, and
34 then only to the extent that, the secured party is
35 proceeding as to personal property or fixtures in a unified
36 sale as provided in subparagraph (ii) of paragraph (a).

37 (iv) Paragraph (b) does not deprive the debtor of the
38 protection of Section 580d of the Code of Civil Procedure
39 against a deficiency judgment following a sale of the real

1 property collateral pursuant to a power of sale in a deed
2 of trust or mortgage.

3 (v) Paragraph (b) shall not affect, nor shall it
4 determine the applicability or inapplicability of, any law
5 respecting real property or obligations secured in whole
6 or in part by real property with respect to a loan or a
7 credit sale made to any individual primarily for personal,
8 family, or household purposes.

9 (vi) Paragraph (b) does not deprive the debtor of the
10 protection of Section 580a of the Code of Civil Procedure
11 following a sale of real property collateral.

12 (vii) If the secured party violates any statute or rule of
13 law that requires a creditor who holds an obligation
14 secured by an interest in real property or an estate
15 therein to resort first to its security before resorting to any
16 property of the debtor that does not secure the obligation,
17 paragraph (b) does not prevent the debtor's assertion of
18 any right to require correction of the violation, any right
19 of the secured party to correct the violation, or the
20 debtor's assertion of the subsequent unenforceability of
21 the encumbrance on any interest in real property or an
22 estate therein securing the obligation, or the debtor's
23 assertion of the subsequent unenforceability of the
24 obligation except to the extent that the obligation is
25 preserved by subparagraph (ii) of paragraph (b).

26 (d) If the secured party realizes proceeds from the
27 disposition of collateral that is personal property or
28 fixtures, the following provisions shall apply:

29 (i) The disposition of the collateral, the realization of
30 the proceeds, the application of the proceeds, or any one
31 or more of the foregoing shall not operate to cure any
32 nonmonetary default.

33 (ii) The disposition of the collateral, the realization of
34 the proceeds, the application of the proceeds, or any one
35 or more of the foregoing shall not operate to cure any
36 monetary default (although the application of the
37 proceeds shall, to the extent of those proceeds, satisfy the
38 secured obligation) so as to affect in any way the secured
39 party's rights and remedies under this chapter with

1 respect to any remaining personal property or fixtures
2 collateral.

3 (iii) All proceeds so realized shall be applied by the
4 secured party to the secured obligation in accordance
5 with the agreement of the parties and applicable law.

6 (e) An action by the secured party utilizing any
7 available judicial procedure, as provided in subdivision
8 (1), shall in no way be affected by omission of a prayer for
9 a monetary judgment on the debt. Notwithstanding
10 Section 726 of the Code of Civil Procedure, any
11 prohibition against splitting causes of action or any other
12 statute or rule of law, a judicial action that neither seeks
13 nor results in a monetary judgment on the debt shall not
14 preclude a subsequent action seeking a monetary
15 judgment on the debt or any other relief.

16 (f) As used in this subdivision, “monetary judgment on
17 the debt” means a judgment for the recovery from the
18 debtor of all or part of the principal amount of the secured
19 obligation, including, for purposes of this subdivision,
20 contractual interest thereon. “Monetary judgment on the
21 debt” does not include a judgment that provides only for
22 other relief (whether or not that other relief is secured by
23 the collateral), such as one or more forms of nonmonetary
24 relief, and monetary relief ancillary to any of the
25 foregoing, such as attorneys’ fees and costs incurred in
26 seeking the relief.

27 (g) If a secured party fails to comply with the
28 procedures applicable to real property in proceeding as
29 to both real and personal property under subparagraph
30 (ii) of paragraph (a), a purchaser for value of any interest
31 in the real property at judicial or nonjudicial foreclosure
32 proceedings conducted pursuant to subparagraph (ii) of
33 paragraph (a) takes that interest free from any claim or
34 interest of another person, or any defect in title, based
35 upon that noncompliance, unless:

36 (i) The purchaser is the secured party and the failure
37 to comply with this chapter occurred other than in good
38 faith; or

39 (ii) The purchaser is other than the secured party and
40 at the time of sale of the real property at that foreclosure

1 the purchaser had knowledge of the failure to comply
2 with this chapter and that the noncompliance occurred
3 other than in good faith.

4 Even if the purchaser at the foreclosure sale does not
5 take his or her interest free of claims, interests, or title
6 defects based upon that noncompliance with this chapter,
7 a subsequent purchaser for value who acquires an interest
8 in that real property from the purchaser at that
9 foreclosure takes that interest free from any claim or
10 interest of another person, or any defect in title, based
11 upon that noncompliance, unless at the time of acquiring
12 the interest the subsequent purchaser has knowledge of
13 the failure to comply with this chapter and that the
14 noncompliance occurred other than in good faith.

15 (h) If a secured party proceeds by way of a unified sale
16 under subparagraph (ii) of paragraph (a), then, for
17 purposes of applying Section 580a or subdivision (b) of
18 Section 726 of the Code of Civil Procedure to any such
19 unified sale, the personal property or fixtures included in
20 the unified sale shall be deemed to be included in the
21 “real property or other interest sold,” as that term is used
22 in Section 580a or subdivision (b) of Section 726 of the
23 Code of Civil Procedure.

24 (5) When a secured party has reduced his or her claim
25 to judgment, the lien of any levy that may be made upon
26 his or her collateral by virtue of any execution based upon
27 the judgment shall relate back to the date of the
28 perfection of the security interest in the collateral. A
29 judicial sale, pursuant to that execution, is a foreclosure of
30 the security interest by judicial procedure within the
31 meaning of this section, and the secured party may
32 purchase at the sale and thereafter hold the collateral free
33 of any other requirements of this division.

34 (6) This section shall be repealed on January 1, 2002.

35 SEC. 9.4. Section 9502 of the Commercial Code, as
36 amended by Section 7 of Chapter 591 of the Statutes of
37 1995, is amended to read:

38 9502. (1) When so agreed and in any event on default
39 the secured party is entitled to notify an account debtor
40 or the obligor on an instrument to make payment to him

1 or her whether or not the assignor was theretofore
2 making collections on the collateral, and also to take
3 control of any proceeds to which he or she is entitled
4 under Section 9306.

5 (2) (a) A secured party who by agreement is entitled
6 to charge back uncollected collateral or otherwise to full
7 or limited recourse against the debtor and who
8 undertakes to collect from the account debtors or obligors
9 must proceed in a commercially reasonable manner and
10 may deduct his or her reasonable expenses of realization
11 from the collections.

12 (b) If the security agreement secures an indebtedness,
13 the secured party must account to the debtor for any
14 surplus.

15 (c) If the security agreement secures an indebtedness,
16 the debtor is liable for any deficiency unless otherwise
17 agreed, but only (i) if the secured party in collection
18 pursuant to this section has proceeded in a commercially
19 reasonable manner, or (ii) as provided in paragraph (d).

20 (d) If the secured party in collecting pursuant to this
21 section has not proceeded in a commercially reasonable
22 manner, the debtor is liable, subject to paragraph (e), for
23 any deficiency only if the balance of the indebtedness
24 immediately before the collection exceeds the amount
25 that the secured party establishes would have been
26 realized had the secured party in collecting pursuant to
27 this section proceeded in a commercially reasonable
28 manner, and the liability is limited to the excess.

29 (e) Notwithstanding paragraph (d), if the secured
30 party in collecting pursuant to this section has not
31 proceeded in a commercially reasonable manner, and if
32 the transaction was entered into by the debtor primarily
33 for personal, family, or household purposes or if the
34 amount of the indebtedness immediately before the
35 collection was one hundred thousand dollars (\$100,000)
36 or less, then the debtor is not liable for any deficiency.

37 (f) Upon entry of a final judgment that the debtor is
38 not liable for a deficiency by reason of either paragraph
39 (d) or paragraph (e), the secured party may neither
40 obtain a deficiency judgment nor retain a security

1 interest in any other collateral of the debtor that secured
2 the indebtedness for which the debtor is no longer liable.

3 (g) To the extent, subsequent to a collection that does
4 not satisfy the conditions set forth in clause (i) of
5 paragraph (c), or subsequent to a disposition that does
6 not satisfy any one or more of the conditions set forth in
7 clause (i) of paragraph (b) of subdivision (2) of Section
8 9504, the secured party collects pursuant to this section on
9 other collateral securing the same indebtedness, the
10 debtor may, to the extent he or she is no longer liable for
11 a deficiency judgment by reason of paragraph (d) or
12 paragraph (e), or by reason of paragraph (c) or
13 paragraph (d) of subdivision (2) of Section 9504, recover
14 the proceeds realized from those subsequent collections,
15 as well as any damages to which the debtor may be
16 entitled if the subsequent collection is itself
17 noncomplying or otherwise wrongful. Except for secured
18 transactions entered by the debtor primarily for personal,
19 family, or household purposes, neither the subsequent
20 collections nor the exercise of any other remedy by the
21 secured party subsequent to a noncomplying collection
22 or disposition shall be deemed tortious or otherwise
23 wrongful based, in whole or in part, on the fact that it
24 occurred subsequent to a noncomplying collection or
25 disposition.

26 (h) If the underlying transaction was a sale of accounts
27 or chattel paper, the debtor is entitled to any surplus or
28 is liable for any deficiency only if the security agreement
29 so provides. The provisions of subdivision (b) of Section
30 701.040 of the Code of Civil Procedure relating to the
31 payment of proceeds apply only if the security agreement
32 provides that the debtor is entitled to any surplus.

33 (i) Nothing herein shall deprive the debtor of any
34 right to recover damages from the secured party under
35 subdivision (1) of Section 9507 or to offset any such
36 damages against any claim by the secured party for a
37 deficiency, or of any right or remedy to which the debtor
38 may be entitled under any other law. However, except in
39 the case of any secured party that has willfully failed to
40 proceed in a commercially reasonable manner in



1 collection pursuant to this section, or in the case of a
2 debtor who entered the secured transaction primarily for
3 personal, family, or household purposes, any damages
4 recoverable by the debtor shall be reduced by the
5 amount of any deficiency that would have resulted had
6 the secured party in collecting pursuant to this section
7 proceeded in conformity with the condition set forth in
8 clause (i) of paragraph (c) regardless whether or not the
9 debtor is liable for the deficiency under paragraph (c) or
10 (d).

11 (3) This section shall be repealed on January 1, 2002.

12 SEC. 9.5. Section 9504 of the Commercial Code, as
13 amended by Section 8 of Chapter 591 of the Statutes of
14 1995, is amended to read:

15 9504. (1) A secured party after default may sell, lease
16 or otherwise dispose of any or all of the collateral in its
17 then condition or following any commercially reasonable
18 preparation or processing. Any sale of goods is subject to
19 the division on sales (Division 2). The proceeds of
20 disposition shall be applied in the order following to:

21 (a) The reasonable expenses of retaking, holding,
22 preparing for sale or lease, selling, leasing and the like
23 and, to the extent provided for in the agreement and not
24 prohibited by law, the reasonable attorneys' fees and legal
25 expenses incurred by the secured party;

26 (b) The satisfaction of indebtedness secured by the
27 security interest under which the disposition is made;

28 (c) The satisfaction of indebtedness secured by any
29 subordinate security interest in the collateral if written
30 notification of demand therefor is received before
31 distribution of the proceeds is completed and to the
32 satisfaction of any subordinate attachment lien or
33 execution lien pursuant to subdivision (b) of Section
34 701.040 of the Code of Civil Procedure if notice of the levy
35 of attachment or execution is received before distribution
36 of the proceeds is completed. If requested by the secured
37 party, the holder of a subordinate security interest must
38 seasonably furnish reasonable proof of his or her interest,
39 and unless he or she does so, the secured party need not
40 comply with his or her demand.

1 (2) (a) If the security interest secures an
2 indebtedness, the secured party must account to the
3 debtor for any surplus except as provided in Section
4 701.040 of the Code of Civil Procedure.

5 (b) If the security interest secures an indebtedness,
6 the debtor is liable for any deficiency unless otherwise
7 agreed or otherwise provided in the Retail Installment
8 Sales Act, and in particular Section 1812.5 of the Civil
9 Code or any other statute, but only (i) if the debtor was
10 given notice, if and as required by subdivision (3), of the
11 disposition of the collateral in accordance with
12 subdivision (3), and the disposition of the collateral by the
13 secured party pursuant to this section was conducted in
14 good faith and in a commercially reasonable manner, or
15 (ii) except for secured transactions entered by a debtor
16 primarily for personal, family, or household purposes, as
17 provided in paragraph (c).

18 (c) If the secured party has provided notice to the
19 debtor pursuant to subdivision (3), if so required, but has
20 not proceeded in a commercially reasonable manner in
21 the disposition of the collateral, the debtor is liable,
22 subject to paragraphs (b) and (d), for any deficiency only
23 if the balance of the indebtedness immediately before the
24 disposition exceeds the amount that the secured party
25 establishes would have been realized had the disposition
26 of the collateral by the secured party pursuant to this
27 section been conducted in conformity with the conditions
28 set forth in clause (i) of paragraph (b), and the liability
29 is limited to the excess. This paragraph does not apply to
30 secured transactions entered by a debtor primarily for
31 personal, family, or household purposes.

32 (d) Notwithstanding paragraph (c), if any one or
33 more of the conditions set forth in clause (i) of paragraph
34 (b) are not proved by the secured party to be satisfied
35 with respect to the disposition, then the debtor is not
36 liable for any deficiency if either:

37 (i) All of the collateral immediately before the
38 disposition was consumer goods and the amount of the
39 indebtedness immediately before the disposition was one
40 hundred thousand dollars (\$100,000) or less.

1 (ii) The amount of the indebtedness immediately
2 before the disposition was fifty thousand dollars (\$50,000)
3 or less.

4 (e) Upon entry of a final judgment that the debtor is
5 not liable for a deficiency by reason of either paragraph
6 (c) or paragraph (d), the secured party may neither
7 obtain a deficiency judgment nor retain a security
8 interest in any other collateral of the debtor that secured
9 the indebtedness for which the debtor is no longer liable.

10 (f) To the extent, subsequent to a disposition that does
11 not satisfy any one or more of the conditions set forth in
12 clause (i) of paragraph (b), or subsequent to a collection
13 that does not satisfy the condition set forth in clause (i)
14 of paragraph (c) of subdivision (2) of Section 9502, the
15 secured party disposes pursuant to this section of other
16 collateral securing the same indebtedness, the debtor
17 may, to the extent he or she is no longer liable for a
18 deficiency judgment by reason of paragraph (c) or
19 paragraph (d), or by reason of paragraph (d) or
20 paragraph (e) of subdivision (2) of Section 9502, recover
21 the proceeds realized from the subsequent dispositions,
22 as well as any damages to which the debtor may be
23 entitled if the subsequent disposition is itself
24 noncomplying or otherwise wrongful. Except for secured
25 transactions entered by a debtor primarily for personal,
26 family, or household purposes, neither the subsequent
27 dispositions nor the exercise of any other remedy by the
28 secured party subsequent to a noncomplying disposition
29 or collection shall be deemed tortious or otherwise
30 wrongful based, in whole or in part, on the fact that it
31 occurred subsequent to a noncomplying disposition or
32 collection.

33 (g) If the underlying transaction was a sale of accounts
34 or chattel paper, the debtor is entitled to any surplus or
35 is liable for any deficiency only if the security agreement
36 so provides. The provisions of subdivision (b) of Section
37 701.040 of the Code of Civil Procedure relating to the
38 payment of proceeds and the liability of the secured party
39 apply only if the security agreement provides that the
40 debtor is entitled to any surplus.

1 (h) Nothing herein shall deprive the debtor of any
2 right to recover damages from the secured party under
3 subdivision (1) of Section 9507 or to offset any such
4 damages against any claim by the secured party for a
5 deficiency, or of any right or remedy to which the debtor
6 may be entitled under any other law; provided, however,
7 that, except in the case of any secured party that has
8 willfully failed to conduct the disposition of collateral in
9 good faith and in a commercially reasonable manner or
10 in the case of a debtor who entered the secured
11 transaction primarily for personal, family, or household
12 purposes, any damages recoverable by the debtor shall be
13 reduced by the amount of any deficiency that would have
14 resulted had the disposition of the collateral by the
15 secured party been conducted in conformity with the
16 conditions set forth in clause (i) of paragraph (b)
17 regardless of whether or not the debtor is liable for the
18 deficiency under paragraph (b) or (c).

19 (3) A sale or lease of collateral may be as a unit or in
20 parcels, at wholesale or retail and at any time and place
21 and on any terms, provided the secured party acts in good
22 faith and in a commercially reasonable manner. Unless
23 collateral is perishable or threatens to decline speedily in
24 value or is of a type customarily sold on a recognized
25 market, the secured party must give to the debtor, if he
26 or she has not signed after default a statement renouncing
27 or modifying his or her right to notification of sale, and to
28 any other person who has a security interest in the
29 collateral and who has filed with the secured party a
30 written request for notice giving his or her address
31 (before that secured party sends his or her notification to
32 the debtor or before debtor's renunciation of his or her
33 rights), a notice in writing of the time and place of any
34 public sale or of the time on or after which any private sale
35 or other intended disposition is to be made. Such notice
36 must be delivered personally or be deposited in the
37 United States mail postage prepaid addressed to the
38 debtor at his or her address as set forth in the financing
39 statement or as set forth in the security agreement or at
40 such other address as may have been furnished to the

1 secured party in writing for this purpose, or, if no address
2 has been so set forth or furnished, at his or her last known
3 address, and to any other secured party at the address set
4 forth in his or her request for notice, at least five days
5 before the date fixed for any public sale or before the day
6 on or after which any private sale or other disposition is
7 to be made. Notice of the time and place of a public sale
8 shall also be given at least five days before the date of sale
9 by publication once in a newspaper of general circulation
10 published in the county in which the sale is to be held or
11 in case no newspaper of general circulation is published
12 in the county in which the sale is to be held, in a
13 newspaper of general circulation published in the county
14 in this state that (1) is contiguous to the county in which
15 the sale is to be held and (2) has, by comparison with all
16 similarly contiguous counties, the highest population
17 based upon total county population as determined by the
18 most recent federal decennial census published by the
19 Bureau of the Census. Any public sale shall be held in the
20 county or place specified in the security agreement, or if
21 no county or place is specified in the security agreement,
22 in the county in which the collateral or any part thereof
23 is located or in the county in which the debtor has his or
24 her residence or chief place of business, or in the county
25 in which the secured party has his or her residence or a
26 place of business if the debtor does not have a residence
27 or chief place of business within this state. If the collateral
28 is located outside of this state or has been removed from
29 this state, a public sale may be held in the locality in which
30 the collateral is located. Any public sale may be
31 postponed from time to time by public announcement at
32 the time and place last scheduled for the sale. The secured
33 party may buy at any public sale and if the collateral is
34 customarily sold in a recognized market or is the subject
35 of widely or regularly distributed standard price
36 quotations he or she may buy at private sale. Any sale of
37 which notice is delivered or mailed and published as
38 herein provided and that is held as herein provided is a
39 public sale.

(4) When collateral is disposed of by a secured party after default, the disposition transfers to a purchaser for value all of the debtor's rights therein, discharges the security interest under which it is made and any security interest or lien subordinate thereto. The purchaser takes free of all such rights and interest even though the secured party fails to comply with the requirements of this chapter or of any judicial proceedings.

(a) In the case of a public sale, if the purchaser has no knowledge of any defects in the sale and if he or she does not buy in collusion with the secured party, other bidders or the person conducting the sale; or

(b) In any other case, if the purchaser acts in good faith.

(5) A person who is liable to a secured party under a guaranty, indorsement, repurchase agreement or the like and who receives a transfer of collateral from the secured party or is subrogated to his or her rights has thereafter the rights and duties of the secured party. Such a transfer of collateral is not a sale or disposition of the collateral under this division.

(6) This section shall be repealed on January 1, 2002.

SEC. 10. Section 8023 of the Elections Code is amended to read:

8023. (a) Except in the case of a judicial office filled in accordance with subdivision (d) of Section 16 of Article VI of the Constitution, every candidate for a judicial office, not more than 14 nor less than five days prior to the first day on which his or her nomination papers may be circulated and signed or may be presented for filing, shall file in the office of the elections official in which his or her nomination papers are required to be filed or left for examination, a written and signed declaration in duplicate of his or her intention to become a candidate for that office on a form to be supplied by the elections officials. A candidate for a numerically designated judicial office shall state in his or her declaration for which office he or she intends to become a candidate. This section shall apply to all judicial offices whether numerically designated or not.

(b) No person may be a candidate nor have his or her name printed upon any ballot as a candidate for judicial office unless he or she has filed the declaration of intention provided for in this section. If the incumbent of a judicial office fails to file a declaration of intention by the end of the period specified in subdivision (a), persons other than the incumbent may file declarations of intention no later than the first day for filing nomination papers.

(c) No candidate for a judicial office shall be required to state his or her residential address on the declaration of intention provided for in this section. However, in cases where the candidate does not state his or her residential address on the declaration of intention, the elections official shall verify that the address is within the appropriate political subdivision and add the notation “verified” to the residential address line of the form.

SEC. 10.2. Section 8040 of the Elections Code is amended to read:

8040. (a) The declaration of candidacy by a candidate shall be substantially as follows:

DECLARATION OF CANDIDACY

I hereby declare myself a ____ Party candidate for nomination to the office of ____ District Number ____ to be voted for at the primary election to be held ____, 19__, and declare the following to be true:

My name is _____.

I want my name and occupational designation to appear on the ballot as follows _____.

Addresses:

Residence _____

Business _____

Mailing _____

Telephone numbers: Day ____ Evening ____

1 I meet the statutory and constitutional qualifications for this office
2 (including, but not limited to, citizenship, residency, and party
3 affiliation, if required).

4 I am at present an incumbent of the following public office
5 (if any) _____.

6 If nominated, I will accept the nomination and not withdraw.

7 _____
8 Signature of candidate
9

10 State of California)
11 County of _____) ss.
12)
13

14 Subscribed and sworn to before me this ____ day of ____,
15 19__.

16 _____
17 Notary Public (or other official)
18

19 Examined and certified by me this ____ day of ____,
20 19__.

21 _____
22 Registrar of Voters—County Clerk
23

24 WARNING: Every person acting on behalf of a candidate
25 is guilty of a misdemeanor who deliberately fails to file at
26 the proper time and in the proper place any declaration
27 of candidacy in his or her possession which is entitled to
28 be filed under the provisions of the Elections Code
29 Section 18202.
30

31 (b) No candidate for a judicial office shall be required
32 to state his or her residential address on the declaration
33 of candidacy. However, in cases where the candidate does
34 not state his or her residential address on the declaration
35 of candidacy, the elections official shall verify whether his
36 or her address is within the appropriate political
37 subdivision and add the notation “verified” where
38 appropriate.

39 SEC. 10.4. Section 8201 of the Elections Code is
40 amended to read:

1 8201. (a) A declaration of candidacy for election or a
2 nomination by the Governor, made pursuant to
3 subdivision (d) of Section 16 of Article VI of the California
4 Constitution, shall be filed with the officer charged with
5 the duty of certifying nominations for publication in the
6 official ballot.

7 (b) No candidate described in subdivision (a) shall be
8 required to state his or her residential address on the
9 declaration of candidacy. However, in cases where the
10 candidate does not state his or her residential address on
11 the declaration of candidacy, the elections official shall
12 verify whether his or her address is within the
13 appropriate political subdivision and add the notation
14 “verified” where appropriate.

15 ~~SEC. 10.6. Section 952 of the Evidence Code is~~
16 ~~amended to read:~~

17 ~~952. As used in this article, “confidential~~
18 ~~communication between client and lawyer” means~~
19 ~~information transmitted between a client and his or her~~
20 ~~lawyer in the course of that relationship and in~~
21 ~~confidence by a means which, so far as the client is aware,~~
22 ~~discloses the information to no third persons other than~~
23 ~~those who are present to further the interest of the client~~
24 ~~in the consultation or those to whom disclosure is~~
25 ~~reasonably necessary for the transmission of the~~
26 ~~information or the accomplishment of the purpose for~~
27 ~~which the lawyer is consulted, and includes a legal~~
28 ~~opinion formed and the advice given by the lawyer in the~~
29 ~~course of that relationship. A communication between a~~
30 ~~client and his or her lawyer is not deemed lacking in~~
31 ~~confidentiality solely because the communication is~~
32 ~~transmitted between the client and his or her lawyer by~~
33 ~~facsimile, cellular telephone, Internet, electronic mail, or~~
34 ~~computer network, or other electronic means.~~

35 SEC. 11. Section 4251 of the Family Code is amended
36 to read:

37 4251. (a) Commencing July 1, 1997, each superior
38 court shall provide sufficient commissioners to hear Title
39 IV-D child support cases filed by the district attorney. The
40 number of child support commissioners required in each

1 county shall be determined by the Judicial Council as
2 prescribed by paragraph (3) of subdivision (b) of Section
3 4252. All actions or proceedings filed by the district
4 attorney in a support action or proceeding in which
5 enforcement services are being provided pursuant to
6 Section 11475.1 of the Welfare and Institutions Code, for
7 an order to establish, modify, or enforce child or spousal
8 support, including actions to establish paternity, shall be
9 referred for hearing to a child support commissioner
10 unless a child support commissioner is not available due
11 to exceptional circumstances, as prescribed by the
12 Judicial Council pursuant to paragraph (7) of subdivision
13 (b) of Section 4252. All actions or proceedings filed by a
14 party other than the district attorney to modify or enforce
15 a support order established by the district attorney or for
16 which enforcement services are being provided pursuant
17 to Section 11475.1 of the Welfare and Institutions Code
18 shall be referred for hearing to a child support
19 commissioner unless a child support commissioner is not
20 available due to exceptional circumstances, as prescribed
21 by the Judicial Council pursuant to paragraph (7) of
22 subdivision (b) of Section 4252.

23 (b) The commissioner shall act as a temporary judge
24 unless an objection is made by the district attorney or any
25 other party. The Judicial Council shall develop a notice
26 which shall be included on all forms and pleadings used
27 to initiate a child support action or proceeding that
28 advises the parties of their right to review by a superior
29 court judge and how to exercise that right. The parties
30 shall also be advised by the court prior to the
31 commencement of the hearing that the matter is being
32 heard by a commissioner who shall act as a temporary
33 judge unless any party objects to the commissioner acting
34 as a temporary judge. While acting as a temporary judge,
35 the commissioner shall receive no compensation other
36 than compensation as a commissioner.

37 (c) If any party objects to the commissioner acting as
38 a temporary judge, the commissioner may hear the
39 matter and make findings of fact and a recommended
40 order. Within 10 court days, a judge shall ratify the



1 recommended order unless either party objects to the
2 recommended order, or where a recommended order is
3 in error. In both cases, the judge shall issue a temporary
4 order and schedule a hearing de novo within 10 court
5 days. Any party may waive his or her right to the review
6 hearing at any time.

7 (d) The commissioner shall, where appropriate, do
8 any of the following:

9 (1) Review and determine ex parte applications for
10 orders and writs.

11 (2) Take testimony.

12 (3) Establish a record, evaluate evidence, and make
13 recommendations or decisions.

14 (4) Enter judgments or orders based upon voluntary
15 acknowledgments of support liability and parentage and
16 stipulated agreements respecting the amount of child
17 support to be paid.

18 (5) Enter default orders and judgments pursuant to
19 Section 4253.

20 (6) In actions in which paternity is at issue, order the
21 mother, child, and alleged father to submit to genetic
22 tests.

23 (e) The commissioner shall, upon application of any
24 party, join issues concerning custody, visitation, and
25 protective orders in the action filed by the district
26 attorney, subject to Section 11350.1 of the Welfare and
27 Institutions Code. After joinder, the commissioner shall:

28 (1) Refer the parents for mediation of disputed
29 custody or visitation issues pursuant to Section 3170 of the
30 Family Code.

31 (2) Accept stipulated agreements concerning custody,
32 visitation, and protective orders and enter orders
33 pursuant to the agreements.

34 (3) Refer contested issues of custody, visitation, and
35 protective orders to a judge or to another commissioner
36 for hearing. A child support commissioner may hear
37 contested custody, visitation, and restraining order issues
38 only if the court has adopted procedures to segregate the
39 costs of hearing Title IV-D child support issues from the

1 costs of hearing other issues pursuant to applicable
2 federal requirements.

3 (f) The district attorney shall be served notice by the
4 moving party of any proceeding under this section in
5 which support is at issue. Any order for support that is
6 entered without the district attorney having received
7 proper notice shall be voidable upon the motion of the
8 district attorney.

9 ~~SEC. 12. Section 6103.9 of the Government Code is~~
10 ~~amended to read:~~

11 ~~6103.9. (a) Notwithstanding any other provision of~~
12 ~~law, except as provided in this section, the district~~
13 ~~attorney shall be exempt from the payment of any fees,~~
14 ~~including filing fees, in any action or proceeding brought~~
15 ~~for the establishment of a child support obligation or the~~
16 ~~enforcement of a child or spousal support obligation.~~
17 ~~Costs associated with those activities shall be subject to~~
18 ~~reimbursement by the district attorney only as provided~~
19 ~~for in this section. The district attorney may negotiate the~~
20 ~~cost for service of process with the marshal or sheriff.~~

21 ~~(b) The district attorney may reimburse a county for~~
22 ~~those direct costs related to the establishment of a child~~
23 ~~support obligation or the enforcement of a child or~~
24 ~~spousal support obligation which have been agreed to~~
25 ~~pursuant to a plan of cooperation. Any reimbursement~~
26 ~~pursuant to a plan of cooperation shall not include any~~
27 ~~amount which is payable as a filing fee.~~

28 ~~(c) For purposes of this section, a “plan of~~
29 ~~cooperation” means an agreement entered into by the~~
30 ~~district attorney and the county clerk of his or her county~~
31 ~~which is approved by the State Department of Social~~
32 ~~Services and which provides that the district attorney will~~
33 ~~reimburse the county for the cost of providing clerical~~
34 ~~and administrative support furnished by the county clerk.~~

35 ~~SEC. 13.~~

36 ~~SEC. 12. Section 21290 of the Government Code is~~
37 ~~amended to read:~~

38 ~~21290. (a) Upon the legal separation or dissolution of~~
39 ~~marriage of a member, the court shall include in the~~

1 judgment or a court order the date on which the parties
2 separated.

3 (b) If the community property is divided in
4 accordance with paragraph (3) of subdivision (a) of
5 Section 2610 of the Family Code, the court shall order that
6 the accumulated contributions and service credit
7 attributable to periods of service during the marriage be
8 divided into two separate and distinct accounts in the
9 name of the member and the nonmember, respectively.
10 Any service credit or accumulated contributions that are
11 not explicitly awarded by the judgment or court order
12 shall be deemed the exclusive property of the member.

13 (c) The court shall address the rights of the
14 nonmember to the following:

15 (1) The right to a retirement allowance, and the
16 consequent right to elect an optional settlement and
17 designate a beneficiary.

18 (2) The right to a refund of accumulated
19 contributions.

20 (3) The right to redeposit accumulated contributions
21 that are eligible for redeposit by the member under
22 Sections 20750 and 20752.

23 (4) The right to purchase service credit that is eligible
24 for purchase by the member under Article 4
25 (commencing with Section 20990) and Article 5
26 (commencing with Section 21020) of Chapter 11.

27 (5) The right to designate a beneficiary to receive his
28 or her accumulated contributions payable where death
29 occurs prior to retirement.

30 (6) The right to designate a beneficiary for any unpaid
31 allowance payable at the time of the nonmember's death.

32 (7) The right to elect coverage in the Second Tier for
33 that member service that is subject to the Second Tier,
34 provided that the election is made within one year of the
35 establishment of the nonmember account or prior to the
36 nonmember's retirement, whichever occurs first.
37 Immediately upon establishment of a nonmember
38 account, the board shall provide, by certified mail, the
39 necessary form and information so that the election may
40 be made.

(d) In the capacity of nonmember, he or she shall not be entitled to any disability or industrial disability retirement allowance, any basic death benefit, any special death benefit, any monthly allowance for survivors of a member or retired person, any insurance benefit, or retired member lump-sum death benefit. No survivor continuance allowance shall be payable to a survivor of a nonmember.

~~SEC. 14. Section 53069.4 of the Government Code is amended to read:~~

~~53069.4. (a) (1) The legislative body of a local agency, as the term "local agency" is defined in Section 54951, may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty. The local agency shall set forth by ordinance the administrative procedures that shall govern the imposition, enforcement, collection, and administrative review by the local agency of those administrative fines or penalties. Where the violation would otherwise be an infraction, the administrative fine or penalty shall not exceed the maximum fine or penalty amounts for infractions set forth in subdivision (b) of Section 25132 and subdivision (b) of Section 36900.~~

~~(2) The administrative procedures set forth by ordinance adopted by the local agency pursuant to paragraph (1), shall provide for a reasonable period of time, as specified in the ordinance, for a person responsible for a continuing violation to correct or otherwise remedy the violation prior to the imposition of administrative fines or penalties, when the violation pertains to building, plumbing, electrical, or other similar structural or zoning issues, that do not create an immediate danger to health or safety.~~

~~(b) (1) Notwithstanding the provisions of Section 1094.5 or 1094.6 of the Code of Civil Procedure within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement or collection of the administrative fines or penalties, a person contesting~~

1 ~~that final administrative order or decision may seek~~
2 ~~review by filing an appeal to be heard by the municipal~~
3 ~~court, where the same shall be heard de novo, except that~~
4 ~~the contents of the local agency's file in the case shall be~~
5 ~~received in evidence. A copy of the document or~~
6 ~~instrument of the local agency providing notice of the~~
7 ~~violation and imposition of the administrative fine or~~
8 ~~penalty shall be admitted into evidence as prima facie~~
9 ~~evidence of the facts stated therein. A copy of the notice~~
10 ~~of appeal shall be served in person or by first-class mail~~
11 ~~upon the local agency by the contestant.~~

12 ~~(2) The fee for filing the notice of appeal shall be~~
13 ~~twenty-five dollars (\$25). The court shall request that the~~
14 ~~local agency's file on the case be forwarded to the court,~~
15 ~~to be received within 15 days of the request. The court~~
16 ~~shall retain the twenty-five dollar (\$25) fee regardless of~~
17 ~~the outcome of the appeal. If the court finds in favor of the~~
18 ~~contestant, the amount of the fee shall be reimbursed to~~
19 ~~the contestant by the local agency. Any deposit of the fine~~
20 ~~or penalty shall be refunded by the local agency in~~
21 ~~accordance with the judgment of the court.~~

22 ~~(3) The conduct of the appeal under this section is a~~
23 ~~subordinate judicial duty that may be performed by~~
24 ~~traffic trial commissioners and other subordinate judicial~~
25 ~~officials at the direction of the presiding judge of the~~
26 ~~court.~~

27 ~~(4) The appeal is informal with the purpose of~~
28 ~~dispensing justice promptly, fairly, and inexpensively. No~~
29 ~~party to an appeal has a right to a trial by a court or jury~~
30 ~~and a statement of decision by the court is not required.~~

31 ~~(e) If no notice of appeal of the local agency's final~~
32 ~~administrative order or decision is filed within the period~~
33 ~~set forth in this section, the order or decision shall be~~
34 ~~deemed confirmed.~~

35 ~~(d) If the fine or penalty has not been deposited and~~
36 ~~the decision of the court is against the contestant, the local~~
37 ~~agency may proceed to collect the penalty pursuant to~~
38 ~~the procedures set forth in its ordinance.~~

39 ~~SEC. 14.7.~~

1 *SEC. 13.* Section 68152 of the Government Code is
2 amended to read:
3 68152. The trial court clerk may destroy court records
4 under Section 68153 after notice of destruction and if
5 there is no request and order for transfer of the records,
6 except the comprehensive historical and sample superior
7 court records preserved for research under the California
8 Rules of Court, when the following times have expired
9 after final disposition of the case in the categories listed:
10 (a) Adoption: retain permanently.
11 (b) Change of name: retain permanently.
12 (c) Other civil actions and proceedings, as follows:
13 (1) Except as otherwise specified: 10 years.
14 (2) Where a party appears by a guardian ad litem: 10
15 years after termination of the court's jurisdiction.
16 (3) Domestic violence: same period as duration of the
17 restraining or other orders and any renewals, then retain
18 the restraining or other orders as a judgment; 60 days
19 after expiration of the temporary protective or
20 temporary restraining order.
21 (4) Eminent domain: retain permanently.
22 (5) Family law, except as otherwise specified: 30 years.
23 (6) Harassment: same period as duration of the
24 injunction and any renewals, then retain the injunction
25 as a judgment; 60 days after expiration of the temporary
26 restraining order.
27 (7) Mental health (Lanterman Developmental
28 Disabilities Services Act and Lanterman-Petris-Short
29 Act): 30 years.
30 (8) Paternity: retain permanently.
31 (9) Petition, except as otherwise specified: 10 years.
32 (10) Real property other than unlawful detainer:
33 retain permanently if the action affects title or an interest
34 in real property.
35 (11) Small claims: 10 years.
36 (12) Unlawful detainer: one year if judgment is for
37 possession of the premises; 10 years if judgment is for
38 money.
39 (d) Notwithstanding subdivision (c), any civil or small
40 claims case in the trial court:

1 (1) Involuntarily dismissed by the court for delay in
2 prosecution or failure to comply with state or local rules:
3 one year.

4 (2) Voluntarily dismissed by a party without entry of
5 judgment: one year.

6 Notation of the dismissal shall be made on the civil
7 index of cases or on a separate dismissal index.

8 (e) Criminal.

9 (1) Capital felony (murder with special circumstances
10 where the prosecution seeks the death penalty): retain
11 permanently. If the charge is disposed of by acquittal or
12 a sentence less than death, the case shall be reclassified.

13 (2) Felony, except as otherwise specified: 75 years.

14 (3) Felony, except capital felony, with court records
15 from the initial complaint through the preliminary
16 hearing or plea and for which the case file does not
17 include final sentencing or other final disposition of the
18 case because the case was bound over to the superior
19 court: five years.

20 (4) Misdemeanor, except as otherwise specified: five
21 years.

22 (5) Misdemeanor alleging a violation of the Vehicle
23 Code, except as otherwise specified: three years.

24 (6) Misdemeanor alleging a violation of Section 23103,
25 23152, or 23153 of the Vehicle Code: seven years.

26 (7) Misdemeanor alleging a violation of Section 14601,
27 14601.1, 20002, 23104, or 23109 of the Vehicle Code: five
28 years.

29 (8) Misdemeanor alleging a marijuana violation under
30 subdivision (b), (c), (d), or (e) of Section 11357 of the
31 Health and Safety Code, or subdivision (b) of Section
32 11360 of the Health and Safety Code in accordance with
33 the procedure set forth in Section 11361.5 of the Health
34 and Safety Code: records shall be destroyed two years
35 from the date of conviction or from the date of arrest if
36 no conviction.

37 (9) Misdemeanor, infraction, or civil action alleging a
38 violation of the regulation and licensing of dogs under
39 Sections 30951 to 30956, inclusive, of the Food and

1 Agricultural Code or violation of any other local
2 ordinance: three years.

3 (10) Infraction, except as otherwise specified: three
4 years.

5 (11) Parking infractions, including alleged violations
6 under the stopping, standing, and parking provisions set
7 forth in Chapter 9 (commencing with Section 22500) of
8 Division 11 of the Vehicle Code: two years.

9 (f) Habeas corpus: same period as period for retention
10 of the records in the underlying case category.

11 (g) Juvenile.

12 (1) Dependent (Section 300 of the Welfare and
13 Institutions Code): upon reaching age 28 or on written
14 request shall be released to the juvenile five years after
15 jurisdiction over the person has terminated under
16 subdivision (a) of Section 826 of the Welfare and
17 Institutions Code. Sealed records shall be destroyed upon
18 court order five years after the records have been sealed
19 pursuant to subdivision (c) of Section 389 of the Welfare
20 and Institutions Code.

21 (2) Ward (Section 601 of the Welfare and Institutions
22 Code): upon reaching age 21 or on written request shall
23 be released to the juvenile five years after jurisdiction
24 over the person has terminated under subdivision (a) of
25 Section 826 of the Welfare and Institutions Code. Sealed
26 records shall be destroyed upon court order five years
27 after the records have been sealed under subdivision (d)
28 of Section 781 of the Welfare and Institutions Code.

29 (3) Ward (Section 602 of the Welfare and Institutions
30 Code): upon reaching age 38 under subdivision (a) of
31 Section 826 of the Welfare and Institutions Code. Sealed
32 records shall be destroyed upon court order when the
33 subject of the record reaches the age of 38 under
34 subdivision (d) of Section 781 of the Welfare and
35 Institutions Code.

36 (4) Traffic and some nontraffic misdemeanors and
37 infractions (Section 601 of the Welfare and Institutions
38 Code): upon reaching age 21 or five years after
39 jurisdiction over the person has terminated under



1 subdivision (c) of Section 826 of the Welfare and
2 Institutions Code. May be microfilmed or photocopied.

3 (5) Marijuana misdemeanor under subdivision (e) of
4 Section 11357 of the Health and Safety Code in
5 accordance with procedures specified in subdivision (a)
6 of Section 11361.5 of the Health and Safety Code: upon
7 reaching age 18 the records shall be destroyed.

8 (h) Probate.

9 (1) Conservatorship: 10 years after decree of
10 termination.

11 (2) Guardianship: 10 years after the age of 18.

12 (3) Probate, including probated wills, except as
13 otherwise specified: retain permanently.

14 (i) Court records of the appellate department of the
15 trial court: five years.

16 (j) Other records.

17 (1) Applications in forma pauperis: any time after the
18 disposition of the underlying case.

19 (2) Arrest warrant: same period as period for retention
20 of the records in the underlying case category.

21 (3) Bench warrant: same period as period for
22 retention of the records in the underlying case category.

23 (4) Bond: three years after exoneration and release.

24 (5) Coroner's inquest report: same period as period for
25 retention of the records in the underlying case category;
26 if no case, then permanent.

27 (6) Court orders not associated with an underlying
28 case, such as orders for destruction of court records for
29 telephone taps, or to destroy drugs, and other
30 miscellaneous court orders: three years.

31 (7) Court reporter notes: 10 years after the notes have
32 been taken in criminal and juvenile proceedings and five
33 years after the notes have been taken in all other
34 proceedings, except notes reporting proceedings in
35 capital felony cases (murder with special circumstances
36 where the prosecution seeks the death penalty and the
37 sentence is death), including notes reporting the
38 preliminary hearing, which shall be retained
39 permanently, unless the Supreme Court on request of the
40 court clerk authorizes the destruction.

(8) Electronic recordings made as the official record of the oral proceedings under the California Rules of Court: any time after final disposition of the case in infraction and misdemeanor proceedings, 10 years in all other criminal proceedings, and five years in all other proceedings.

(9) Electronic recordings not made as the official record of the oral proceedings under the California Rules of Court: any time either before or after final disposition of the case.

(10) Index, except as otherwise specified: retain permanently.

(11) Index for cases alleging traffic violations: same period as period for retention of the records in the underlying case category.

(12) Judgments within the jurisdiction of the superior court: retain permanently.

(13) Judgments within the jurisdiction of the municipal and justice court: same period as period for retention of the records in the underlying case category.

(14) Minutes: same period as period for retention of the records in the underlying case category.

(15) Naturalization index: retain permanently.

(16) Ninety-day evaluation (under Section 1203.03 of the Penal Code): same period as period for retention of the records in the underlying case category, or period for completion or termination of probation, whichever is longer.

(17) Register of actions or docket: same period as period for retention of the records in the underlying case category, but in no event less than 10 years for civil and small claims cases.

(18) Search warrant: 10 years, except search warrants issued in connection with a capital felony case defined in paragraph (7), which shall be retained permanently.

(k) Retention of any of the court records under this section shall be extended as follows:

(1) By order of the court on its own motion, or on application of a party or any interested member of the

1 public for good cause shown and on such terms as are just.
2 No fee shall be charged for making the application.

3 (2) Upon application and order for renewal of the
4 judgment to the extended time for enforcing the
5 judgment.

6 ~~SEC. 15.~~

7 *SEC. 14.* Section 68511.3 of the Government Code is
8 amended to read:

9 68511.3. (a) The Judicial Council shall formulate and
10 adopt uniform forms and rules of court for litigants
11 proceeding in forma pauperis. These rules shall provide
12 for all of the following:

13 (1) Standard procedures for considering and
14 determining applications for permission to proceed in
15 forma pauperis, including, in the event of a denial of such
16 permission, a written statement detailing the reasons for
17 denial and an evidentiary hearing where there is a
18 substantial evidentiary conflict.

19 (2) Standard procedures to toll relevant time
20 limitations when a pleading or other paper accompanied
21 by such an application is timely lodged with the court and
22 delay is caused due to the processing of the application to
23 proceed in forma pauperis.

24 (3) Proceeding in forma pauperis at every stage of the
25 proceedings at both the appellate and trial levels of the
26 court system.

27 (4) The confidentiality of the financial information
28 provided to the court by these litigants.

29 (5) That the court may authorize the clerk of the
30 court, county financial officer, or other appropriate
31 county officer to make reasonable efforts to verify the
32 litigant's financial condition without compromising the
33 confidentiality of the application.

34 (6) That permission to proceed in forma pauperis be
35 granted to all of the following:

36 (A) Litigants who are receiving benefits pursuant to
37 the Supplemental Security Income (SSI) and State
38 Supplemental Payments (SSP) programs (Sections 12200
39 to 12205, inclusive, of the Welfare and Institutions Code),
40 the California Work Opportunity and Responsibility to

1 Kids Act (CalWORKs) program (Chapter 2
2 (commencing with Section 11200) of Part 3 of Division 9
3 of the Welfare and Institutions Code), the Food Stamp
4 program (7 U.S.C. Sec. 2011 et seq.), or Section 17000 of
5 the Welfare and Institutions Code.

6 (B) Litigants whose monthly income is 125 percent or
7 less of the current monthly poverty line annually
8 established by the Secretary of Health and Human
9 Services pursuant to the Omnibus Budget Reconciliation
10 Act of 1981, as amended.

11 (C) Other persons when in the court's discretion, this
12 permission is appropriate because the litigant is unable to
13 proceed without using money which is necessary for the
14 use of the litigant or the litigant's family to provide for the
15 common necessities of life.

16 (b) (1) Litigants who apply for permission to proceed
17 in forma pauperis pursuant to subparagraph (A) of
18 paragraph (6) of subdivision (a) shall declare under
19 penalty of perjury that they are receiving such benefits
20 and may voluntarily provide the court with their social
21 security number to permit the court to verify the
22 applicant's receipt of public assistance. The court may
23 require any applicant, except a defendant in an unlawful
24 detainer action, who chooses not to disclose his or her
25 social security number for verification purposes to attach
26 to the application documentation of benefits to support
27 the claim and all other financial information on a form
28 promulgated by the Judicial Council for this purpose.

29 (2) Litigants who apply for permission to proceed in
30 forma pauperis pursuant to subparagraph (B) or (C) of
31 paragraph (6) of subdivision (a) shall file a financial
32 statement under oath on a form promulgated by, and
33 pursuant to rules adopted by, the Judicial Council.

34 (c) The forms and rules adopted by the Judicial
35 Council shall provide for the disclosure of the following
36 information about the litigant:

- 37 (1) Current street address.
38 (2) Date of birth.
39 (3) Occupation and employer.
40 (4) Monthly income and expenses.

1 (5) Address and value of any real property owned
2 directly or beneficially.

3 (6) Personal property with a value that exceeds five
4 hundred dollars (\$500).

5 The information furnished by the litigant shall be used
6 by the court in determining his or her ability to pay all or
7 a portion of the fees and costs.

8 (d) At any time after the court has granted a litigant
9 permission to proceed in forma pauperis and prior to final
10 disposition of the case, the clerk of the court, county
11 financial officer, or other appropriate county officer may
12 notify the court of any changed financial circumstances
13 which may enable the litigant to pay all or a portion of the
14 fees and costs which had been waived. The court may
15 authorize the clerk of the court, county financial officer,
16 or other appropriate county officer to require the litigant
17 to appear before and be examined by the person
18 authorized to ascertain the validity of their indigent
19 status. However, no litigant shall be required to appear
20 more than once in any four-month period. A litigant
21 proceeding in forma pauperis shall notify the court within
22 five days of any settlement or monetary consideration
23 received in settlement of this litigation and of any other
24 change in financial circumstances that affects the
25 litigant's ability to pay court fees and costs. After the
26 litigant either (1) appears before and is examined by the
27 person authorized to ascertain the validity of his or her
28 indigent status or (2) notifies the court of a change in
29 financial circumstances, the court may then order the
30 litigant to pay to the county such sum and in such manner
31 as the court believes is compatible with the litigant's
32 financial ability.

33 In any action or proceeding in which the litigant whose
34 fees and costs have been waived would have been
35 entitled to recover those fees and costs from another
36 party to the action or proceeding had they been paid, the
37 court may assess the amount of the waived fees and costs
38 against the other party and order the other party to pay
39 that sum to the county or to the clerk and serving and
40 levying officers respectively, or the court may order the

1 amount of the waived fees and costs added to the
2 judgment and so identified by the clerk.

3 Execution may be issued on any order provided for in
4 this subdivision in the same manner as on a judgment in
5 a civil action. When an amount equal to the sum due and
6 payable to the clerk has been collected upon the
7 judgment, these amounts shall be remitted to the clerk
8 within 30 days. Thereafter, when an amount equal to the
9 sum due to the serving and levying officers has been
10 collected upon the judgment, these amounts shall be due
11 and payable to those officers and shall be remitted within
12 30 days. If the remittance is not received by the clerk
13 within 30 days or there is a filing of a partial satisfaction
14 of judgment in an amount at least equal to the fees and
15 costs payable to the clerk or a satisfaction of judgment has
16 been filed, notwithstanding any other provision of law,
17 the court may issue an abstract of judgment, writ of
18 execution, or both for recovery of those sums, plus the
19 fees for issuance and execution and an additional fee for
20 administering this section. The county board of
21 supervisors shall establish a fee, not to exceed actual costs
22 of administering this subdivision and in no case exceeding
23 twenty-five dollars (\$25), which shall be added to the writ
24 of execution.

25 (e) Notwithstanding subdivision (a), a person who is
26 sentenced to imprisonment in a state prison or confined
27 in a county jail and, during the period of imprisonment
28 or confinement, files a civil action or notice of appeal of
29 a civil action in forma pauperis shall be required to pay
30 the full amount of the filing fee to the extent provided in
31 this subdivision.

32 (1) In addition to the form required by this section for
33 filing in forma pauperis, an inmate shall file a copy of a
34 statement of account for any sums due to the inmate for
35 the six-month period immediately preceding the filing of
36 the civil action or notice of appeal of a civil action. This
37 copy shall be certified by the appropriate official of the
38 Department of Corrections or a county jail.

39 (2) Upon filing the civil action or notice of appeal of a
40 civil action, the court shall assess, and when funds exist,

1 collect, as a partial payment of any required court fees, an
2 initial partial filing fee of 20 percent of the greater of one
3 of the following:

4 (A) The average monthly deposits to the inmate's
5 account.

6 (B) The average monthly balance in the inmate's
7 account for the six-month period immediately preceding
8 the filing of the civil action or notice of appeal.

9 (3) After payment of the initial partial filing fee, the
10 inmate shall be required to make monthly payments of 20
11 percent of the preceding month's income credited to the
12 inmate's account. The Department of Corrections shall
13 forward payments from this account to the clerk of the
14 court each time the amount in the account exceeds ten
15 dollars (\$10) until the filing fees are paid.

16 (4) In no event shall the filing fee collected pursuant
17 to this subdivision exceed the amount of fees permitted
18 by law for the commencement of a civil action or an
19 appeal of a civil action.

20 (5) In no event shall an inmate be prohibited from
21 bringing a civil action or appeal of a civil action solely
22 because the inmate has no assets and no means to pay the
23 initial partial filing fee.

24 ~~SEC. 15.5.~~

25 *SEC. 15.* Section 68514 is added to the Government
26 Code, to read:

27 68514. (a) The Legislature finds and declares as
28 follows:

29 (1) According to the California Department of
30 Finance there are approximately 300,000 Indians in the
31 state, approximately 1 percent of the state's population.

32 (2) There are 103 federally recognized tribes and an
33 additional 28 tribes seeking federal recognition,
34 according to a 1994 study by the Bureau of Indian Affairs.

35 (3) There is an increasing need to address the
36 problems of California tribes and their relation to the
37 State of California in such areas as criminal justice, civil
38 law, children's issues, consumer issues, economic
39 development, health, social services, education, and the
40 environment.

1 (4) There is an emerging discussion and cooperation
2 between California tribes and the judiciary of California
3 which offers the possibility of improving relations
4 between these sovereign governments.

5 (5) An example of such cooperation is the recent
6 agreement of the Hoopa Tribe and the courts of
7 Humboldt County to mutually use tribal court facilities
8 and to share tribal court staff for both the existing Hoopa
9 Tribal Court and a branch of the Superior and Municipal
10 Courts of Humboldt County.

11 (6) The Judicial Council has recently conducted a
12 “Conference on Native American Legal Issues” and is
13 developing policy recommendations. The mandate of the
14 conference, articulated by California Supreme Court
15 Chief Justice Ron George in a letter to that conference,
16 was to improve coordination between state courts, tribal
17 courts, and tribal communities so that Native Americans
18 are assured fair access to justice in tribal, federal, and state
19 jurisdictions.

20 (7) As California Indians and tribes develop and
21 interact with nontribal communities and governments it
22 is increasingly important that the judiciary of California
23 work with tribes to assure that this is a productive and
24 cooperative process.

25 (b) The Legislature commends the Judicial Council
26 for its current efforts to ensure California tribes and
27 California Indians receive fair access to justice in this state
28 and to assist in the establishment of tribal courts.

29 (c) The Legislature urges the Judicial Council to
30 continue this effort, including all of the following
31 potential activities:

32 (1) The Judicial Council should consider conducting
33 seminars and meetings on such subjects as the Indian
34 Child Welfare Act, and other subjects of importance to
35 the judiciary of California and to California Indians and
36 their tribes.

37 (2) The Judicial Council should consider offering
38 access to its educational and training programs for tribal
39 judges, court personnel, and criminal justice personnel.

1 (3) The Judicial Council should consider the
2 production of a policy manual on tribal-state legal issues,
3 in conjunction with organizations familiar with Indian
4 and tribal law.

5 (4) The Judicial Council should consider commencing
6 a study of the existing Rules of Court to clarify any that
7 need such clarification and to promote fair and equal
8 access to a system of justice for California Indians.

9 (5) The Judicial Council should consider sponsoring
10 training and awareness programs for California judges
11 and court personnel, in order to acquaint them with the
12 social and cultural aspects of Indian and tribal affairs.

13 (6) The Judicial Council should consider appointing
14 tribal representatives to appropriate council committees,
15 advisory panels, and other units of the council.

16 ~~SEC. 16. Section 69845.5 of the Government Code is~~
17 ~~amended to read:~~

18 ~~69845.5. In lieu of maintaining a register of actions as~~
19 ~~described in Section 69845, the clerk of the superior court~~
20 ~~may maintain a register of actions by preserving all the~~
21 ~~court records filed, lodged, or maintained in connection~~
22 ~~with the case by any means authorized pursuant to~~
23 ~~Section 68150.~~

24 ~~SEC. 17.~~

25 *SEC. 16.* Section 75050 of the Government Code is
26 amended to read:

27 75050. (a) Upon the legal separation or dissolution of
28 marriage of a member, the court shall include in the
29 judgment or a court order the date on which the parties
30 separated.

31 (b) If the court orders the division of the community
32 property interest in the system pursuant to paragraph (3)
33 of subdivision (a) of Section 2610 of the Family Code, the
34 accumulated contributions and service credit
35 attributable to periods of service during the marriage
36 shall be divided into two separate and distinct accounts
37 in the name of the member and nonmember,
38 respectively. Any service credit or accumulated
39 contributions which are not explicitly awarded by the

1 judgment or court order shall be deemed the exclusive
2 property of the member.

3 (c) Upon receipt of the court order separating the
4 account of the member and the nonmember pursuant to
5 this section, the board shall determine the rights of the
6 nonmember, taking into consideration the court order
7 and the account of the member. These rights may include
8 the following:

9 (1) The right to a retirement allowance.

10 (2) The right to a refund of accumulated retirement
11 contributions.

12 (3) The right to redeposit accumulated contributions
13 which are eligible for redeposit by the member under
14 Section 75028.5.

15 (4) The right to purchase service credit which is
16 eligible for purchase by the member under Sections 75029
17 to 75030.5.

18 (5) The right to designate a beneficiary to receive his
19 or her accumulated contributions payable where death
20 occurs prior to retirement.

21 (6) The right to designate a beneficiary for any unpaid
22 allowance payable at the time of the nonmember's death.

23 (d) In the capacity of nonmember, the nonmember
24 shall not be entitled to any disability retirement
25 allowance.

26 ~~SEC. 18.~~

27 *SEC. 17.* Section 76219 of the Government Code is
28 amended to read:

29 76219. (a) The Courthouse Construction Fund
30 established in Los Angeles County pursuant to Section
31 76100 shall be known as the Robbins Courthouse
32 Construction Fund.

33 (b) All courtroom construction in the County of Los
34 Angeles which utilizes moneys from the Robbins
35 Courthouse Construction Fund or moneys borrowed and
36 owed against the Robbins Courthouse Construction Fund
37 shall be within the boundaries of the San Fernando Valley
38 Statistical Area and the Los Cerritos Municipal Court
39 District, until the time that the County of Los Angeles has
40 spent a total of at least forty-three million dollars

1 (\$43,000,000) on courthouse construction within the San
2 Fernando Valley Statistical Area and at least eight million
3 dollars (\$8,000,000) within the Los Cerritos Municipal
4 Court District for the Bellflower Courthouse.

5 (c) All courtroom construction in the County of Los
6 Angeles which utilizes moneys from the Robbins
7 Courthouse Construction Fund or moneys borrowed
8 against the Robbins Courthouse Construction Fund shall
9 be within the boundaries of the San Fernando Valley
10 Statistical Area, within the boundaries of the Los Cerritos
11 Municipal Court District, within the boundaries of the
12 East Los Angeles Municipal Court District, within the
13 Downey Municipal Court District, within the community
14 of Hollywood, or within the West Los Angeles Branch of
15 the Los Angeles Municipal Court District, until the time
16 that the County of Los Angeles has fulfilled the
17 requirements of subdivision (b) and has additionally
18 spent at least sixteen million five hundred thousand
19 dollars (\$16,500,000) on courthouse construction within
20 the East Los Angeles Municipal Court District, has spent
21 at least ten million dollars (\$10,000,000) on courthouse
22 construction within the Downey Municipal Court
23 District, has commenced construction on a courthouse
24 with at least six courtrooms in the West San Fernando
25 Valley, has commenced construction on a courthouse
26 with at least two courtrooms in the community of
27 Hollywood, and has commenced construction on a
28 courthouse for the West Los Angeles Branch of the Los
29 Angeles Municipal Court District.

30 (d) All courtroom construction in the County of Los
31 Angeles which utilizes moneys from the Robbins
32 Courthouse Construction Fund or moneys borrowed
33 against the Robbins Courthouse Construction Fund shall
34 be within the boundaries of the San Fernando Valley
35 Statistical Area, within the boundaries of the Los Cerritos
36 Municipal Court District, within the boundaries of the
37 East Los Angeles Municipal Court District, within the
38 Downey Municipal Court District, within the community
39 of Hollywood, within the West Los Angeles Branch of the
40 Los Angeles Municipal Court District, within the

1 Pasadena Judicial District, within the Southeast
2 Municipal Court District, within the South Bay Judicial
3 District, within the Santa Monica Judicial District, within
4 the Antelope Valley Judicial District, or within the Long
5 Beach Judicial District until the time that the County of
6 Los Angeles has fulfilled the requirements of subdivisions
7 (b) and (c), and has commenced construction of new
8 facilities or the expansion of existing facilities for the
9 municipal courts in the Pasadena Judicial District, the
10 north and south branches of the Southeast Municipal
11 Court District, and the South Bay Judicial District, has
12 commenced construction on a courthouse for the
13 superior court with at least 18 courtrooms in the North
14 Hollywood Redevelopment Project Area of the City of
15 Los Angeles or immediately adjacent thereto, and has
16 commenced construction of new facilities for the superior
17 and municipal courts in the Santa Monica Judicial
18 District, the Antelope Valley Judicial District, and the
19 Long Beach Judicial District.

20 (e) For purposes of this section, the San Fernando
21 Valley Statistical Area includes all land within the San
22 Fernando Valley Statistical Area (as defined in
23 subdivision (e) of Section 11093) as well as the City of San
24 Fernando, the City of Hidden Hills, and the
25 unincorporated areas of Los Angeles County located west
26 of the City of Los Angeles, east and south of the Ventura
27 County line, and north of a line extended westerly from
28 the southern boundary of the San Fernando Valley
29 Statistical Area (as defined in subdivision (c) of Section
30 11093).

31 (f) The moneys of the Robbins Courthouse
32 Construction Fund together with any interest earned
33 thereon shall be payable only for courtroom construction
34 and land acquisition as authorized in subdivision (b) and,
35 after the requirement of subdivision (b) has been met,
36 shall be payable only for courtroom construction and land
37 acquisition as authorized in subdivision (c) and, after the
38 requirements of subdivisions (b) and (c) have been met,
39 shall be payable only for courtroom construction and land
40 acquisition as authorized in subdivision (d).

(g) Deposits into the fund shall continue through and including either (1) the 25th year after the initial calendar year in which the surcharge is selected or (2) whatever period of time is necessary to repay any borrowings made by the county to pay for construction provided for in this section, whichever time is longer.

(h) The resolution adopted by the Board of Supervisors of the County of Los Angeles on September 2, 1980, stating that the provisions of Chapter 578 of the Statutes of 1980 are necessary to the establishment of adequate courtroom facilities in the County of Los Angeles shall be deemed a resolution stating that the provisions of this section are necessary to the establishment of adequate courtroom facilities in the county, and shall satisfy the requirements of this section.

~~SEC. 19. Section 77200 of the Government Code is amended to read:~~

~~77200. On and after July 1, 1997, the state shall assume sole responsibility for the funding of court operations, as defined in Section 77003 and Rule 810 of the California Rules of Court as it read on July 1, 1996. In meeting this responsibility, the state shall do all of the following:~~

~~(a) Deposit in the State Trial Court Trust Fund, for subsequent allocation to or for the trial courts, all county funds remitted to the state pursuant to Section 77201, until June 30, 1998, and pursuant to Section 77201.1, thereafter.~~

~~(b) Be responsible for the cost of court operations incurred by the trial courts in the 1997-98 fiscal year and subsequent fiscal years.~~

~~(c) Allocate funds to the individual trial courts pursuant to an allocation schedule adopted by the Judicial Council, but in no case shall the amount allocated to the trial courts of a county be less than the amount remitted to the state by the county in which those courts are located pursuant to paragraphs (1) and (2) of subdivision~~

~~(b) of Section 77201, until June 30, 1998, and pursuant to paragraphs (1) and (2) of subdivision (b) of Section 77201.1, thereafter.~~

~~(d) The Judicial Council shall submit its allocation schedule to the Controller at least 15 days before the due date of any allocation.~~

~~SEC. 19.2.~~

SEC. 18. Section 33502 of the Health and Safety Code is amended to read:

33502. The judgment shall determine the validity or invalidity, respectively, of the matters specified in Section 33501. The judgment shall be subject to being reopened under Section 473 or Section 473.5 of the Code of Civil Procedure or otherwise only within 90 days after the entry of the judgment and petitioner and any person who has appeared in the special proceeding shall have the right to move for a new trial under proper circumstances and upon appropriate grounds and to appeal from the judgment.

~~SEC. 19.4.~~

SEC. 19. Section 115800.1 of the Health and Safety Code is amended to read:

115800.1. (a) In-line skating by an adult shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all of the following conditions are met:

(1) The local public agency has, by legislative action, designated specific public property as a recreational area, boardwalk, or park in which in-line skating is permitted.

(2) The designated area, boardwalk, or park is adequately posted with notices advising the public that in-line skating in the designated area by adults is deemed to be a hazardous recreational activity and that the public entity may not be liable for injuries incurred by persons participating in the hazardous recreational activity in the designated area, boardwalk, or park.

(b) Nothing in Section 831.7 of the Government Code or this section shall be deemed to limit the duty of a public entity to maintain public property or premises in a safe manner.

(c) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by an in-line skater on designated public property and other

1 public property. The local public agency shall also
 2 maintain a record of all claims, paid and not paid,
 3 including any lawsuits and their results, arising from those
 4 incidents that were filed against the public agency.
 5 Beginning in 1999, copies of these records shall be filed
 6 annually, no later than January 30 each year, with the
 7 Judicial Council, which shall submit a report to the
 8 Legislature on or before March 31, 2000, on the incidences
 9 of injuries incurred, claims asserted, and the results of any
 10 lawsuit filed, by persons injured while in-line skating on
 11 designated public property and other public property.

12 (d) This section shall remain in effect only until
 13 January 1, 2001, and as of that date is repealed, unless a
 14 later enacted statute, that is enacted before January 1,
 15 2001, deletes or extends that date.

16 ~~SEC. 20. Section 101 of the Labor Code is repealed.~~

17 ~~SEC. 21.~~

18 SEC. 20. Section 1368 of the Penal Code is amended
 19 to read:

20 1368. (a) If, during the pendency of an action and
 21 prior to judgment, a doubt arises in the mind of the judge
 22 as to the mental competence of the defendant, he or she
 23 shall state that doubt in the record and inquire of the
 24 attorney for the defendant whether, in the opinion of the
 25 attorney, the defendant is mentally competent. If the
 26 defendant is not represented by counsel, the court shall
 27 appoint counsel. At the request of the defendant or his or
 28 her counsel or upon its own motion, the court shall recess
 29 the proceedings for as long as may be reasonably
 30 necessary to permit counsel to confer with the defendant
 31 and to form an opinion as to the mental competence of
 32 the defendant at that point in time.

33 (b) If counsel informs the court that he or she believes
 34 the defendant is or may be mentally incompetent, the
 35 court shall order that the question of the defendant's
 36 mental competence is to be determined in a hearing
 37 which is held pursuant to Sections 1368.1 and 1369. If
 38 counsel informs the court that he or she believes the
 39 defendant is mentally competent, the court may

1 nevertheless order a hearing. Any hearing shall be held
2 in the superior court.

3 (c) Except as provided in Section 1368.1, when an
4 order for a hearing into the present mental competence
5 of the defendant has been issued, all proceedings in the
6 criminal prosecution shall be suspended until the
7 question of the present mental competence of the
8 defendant has been determined.

9 If a jury has been impaneled and sworn to try the
10 defendant, the jury shall be discharged only if it appears
11 to the court that undue hardship to the jurors would result
12 if the jury is retained on call.

13 If the defendant is declared mentally incompetent, the
14 jury shall be discharged.

15 ~~SECTION 21.5.~~

16 *SEC. 21.* Section 11165.8 of the Penal Code is
17 amended to read:

18 11165.8. As used in this article, “health practitioner”
19 means any of the following:

20 (a) A physician and surgeon, psychiatrist,
21 psychologist, dentist, resident, intern, podiatrist,
22 chiropractor, licensed nurse, dental hygienist,
23 optometrist, marriage, family and child counselor,
24 clinical social worker, or any other person who is
25 currently licensed under Division 2 (commencing with
26 Section 500) of the Business and Professions Code.

27 (b) Any emergency medical technician I or II,
28 paramedic, or other person certified pursuant to Division
29 2.5 (commencing with Section 1797) of the Health and
30 Safety Code.

31 (c) A psychological assistant registered pursuant to
32 Section 2913 of the Business and Professions Code.

33 (d) A marriage, family and child counselor trainee, as
34 defined in subdivision (c) of Section 4980.03 of the
35 Business and Professions Code.

36 (e) An unlicensed marriage, family and child
37 counselor intern registered under Section 4980.44 of the
38 Business and Professions Code.

39 (f) A state or county public health employee who
40 treats a minor for venereal disease or any other condition.

1 (g) A coroner.

2 (h) A medical examiner, or any other person who
3 performs autopsies.

4 ~~SEC. 22. Section 40230 of the Vehicle Code is~~
5 ~~amended to read:~~

6 ~~40230. (a) Within 30 calendar days after the mailing~~
7 ~~or personal delivery of the final decision described in~~
8 ~~subdivision (b) of Section 40215, the contestant may seek~~
9 ~~review by filing an appeal to be heard by the municipal~~
10 ~~court, where the same shall be heard de novo, except that~~
11 ~~the contents of the processing agency's file in the case~~
12 ~~shall be received in evidence. A copy of the notice of~~
13 ~~parking violation or, if the citation was issued~~
14 ~~electronically, a true and correct abstract containing the~~
15 ~~information set forth in the notice of parking violation~~
16 ~~shall be admitted into evidence as prima facie evidence~~
17 ~~of the facts stated therein. A copy of the notice of appeal~~
18 ~~shall be served in person or by first-class mail upon the~~
19 ~~processing agency by the contestant. For purposes of~~
20 ~~computing the 30 calendar day period, Section 1013 of the~~
21 ~~Code of Civil Procedure shall be applicable.~~

22 ~~(b) The fee for filing the notice of appeal is twenty-five~~
23 ~~dollars (\$25). The court shall request that the processing~~
24 ~~agency's file on the case be forwarded to the court, to be~~
25 ~~received within 15 calendar days of the request. The court~~
26 ~~shall notify the contestant of the appearance date by mail~~
27 ~~or personal delivery. The court shall retain the~~
28 ~~twenty-five dollar (\$25) fee regardless of the outcome of~~
29 ~~the appeal. If the court finds in favor of the contestant, the~~
30 ~~amount of the fee shall be reimbursed to the contestant~~
31 ~~by the processing agency. Any deposit of parking penalty~~
32 ~~shall be refunded by the processing agency in accordance~~
33 ~~with the judgment of the court.~~

34 ~~(c) The conduct of the appeal under this section is a~~
35 ~~subordinate judicial duty that may be performed by~~
36 ~~traffic trial commissioners and other subordinate judicial~~
37 ~~officials at the direction of the presiding judge of the~~
38 ~~court.~~

39 ~~(d) The appeal is informal with the purpose of~~
40 ~~dispensing justice promptly, fairly, and inexpensively. No~~

~~party to an appeal has a right to a trial by a court or jury and a statement of decision by the court is not required.~~

~~(e) If no notice of appeal of the processing agency's decision is filed within the period set forth in subdivision (a), the decision shall be deemed final.~~

~~(f) If the parking penalty has not been deposited and the decision is against the contestant, the processing agency shall, after the decision becomes final, proceed to collect the penalty pursuant to Section 40220.~~

~~SEC. 23. Section 40256 of the Vehicle Code is amended to read:~~

~~40256. (a) Within 20 days after the mailing of the final decision described in subdivision (b) of Section 40255, the contestant may seek review by filing an appeal to the justice or municipal court, where the same shall be heard de novo, except that the contents of the processing agency's file in the case on appeal shall be received in evidence. A copy of the notice of toll evasion violation shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the contestant. For purposes of computing the 20-day period, Section 1013 of the Code of Civil Procedure shall be applicable.~~

~~(b) The fee for filing the notice of appeal shall be twenty-five dollars (\$25). If the appellant prevails, this fee, together with any deposit of toll evasion penalty, shall be promptly refunded by the processing agency in accordance with the judgment of the court.~~

~~(c) The conduct of the hearing on appeal under this section is a subordinate judicial duty which may be performed by commissioners and other subordinate judicial officials at the direction of the presiding judge of the court.~~

~~(d) The appeal is informal with the purpose of dispensing justice promptly, fairly, and inexpensively. No party to an appeal has a right to a trial by a court or jury and a statement of decision by the court is not required.~~

1 ~~(e) If no notice of appeal of the processing agency's~~
2 ~~decision is filed within the period set forth in subdivision~~
3 ~~(a), the decision shall be deemed final.~~

4 ~~(f) If the toll evasion penalty has not been deposited~~
5 ~~and the decision is adverse to the contestant, the~~
6 ~~processing agency may, promptly after the decision~~
7 ~~becomes final, proceed to collect the penalty under~~
8 ~~Section 40267.~~

9 ~~SEC. 24.~~

10 *SEC. 22.* Section 602 of the Welfare and Institutions
11 Code is amended to read:

12 602. Any person who is under the age of 18 years when
13 he or she violates any law of this state or of the United
14 States or any ordinance of any city or county of this state
15 defining crime other than an ordinance establishing a
16 curfew based solely on age, is within the jurisdiction of the
17 juvenile court, which may adjudge him or her to be a
18 ward of the court.

19 ~~SEC. 25.~~

20 *SEC. 23.* Section 5 of Chapter 1125 of the Statutes of
21 1990, as amended by Section 9 of Chapter 591 of the
22 Statutes of 1995, is amended to read:

23 Sec. 5. Sections 1.5, 2.5, 3.5, and 4.5 of this act shall
24 become operative on January 1, 2002.

25 ~~SEC. 26.~~

26 *SEC. 24.* Notwithstanding Section 17610 of the
27 Government Code, if the Commission on State Mandates
28 determines that this act contains costs mandated by the
29 state, reimbursement to local agencies and school
30 districts for those costs shall be made pursuant to Part 7
31 (commencing with Section 17500) of Division 4 of Title
32 2 of the Government Code. If the statewide cost of the
33 claim for reimbursement does not exceed one million
34 dollars (\$1,000,000), reimbursement shall be made from
35 the State Mandates Claims Fund.

36 Notwithstanding Section 17580 of the Government
37 Code, unless otherwise specified, the provisions of this act
38 shall become operative on the same date that the act
39 takes effect pursuant to the California Constitution.

1		_____
2	CORRECTIONS	
3	Title — Line 3.	
4	Text — Pages 29 and 112.	
5		_____
6		

